Department of Planning and Zoning

149 Church Street Burlington, VT 05401 Telephone: (802) 865-7188 (802) 865-7195 (FAX) (802) 865-7142 (TTY) David White, AICP, Director Ken Lerner, Assistant Director Sandrine Thibault, AICP, Comprehensive Planner Jay Appleton, GIS Manager Scott Gustin, AICP, Senior Planner Mary O'Neil, Associate Planner Nic Anderson, Zoning Clerk Elsie Tillotson, Department Secretary



TO:

Development Review Board

FROM:

Scott Gustin

DATE:

February 18, 2014

RE:

14-0720CA; 180-188 Battery Street

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: BST

Ward: 5

Owner/Applicant: Investors Corporation of Vermont

Request: Amend ZP#10-0601CA/MA for change to north facade (King Street) for pedestrian

entry and new vent.

Recommendation: Denial as per the following findings:

I. Findings

Article 6: Development Review Standards:

Part 3, Architectural Design Standards

Sec. 6.3.2 Review Standards

(d) Provide an active and inviting street edge

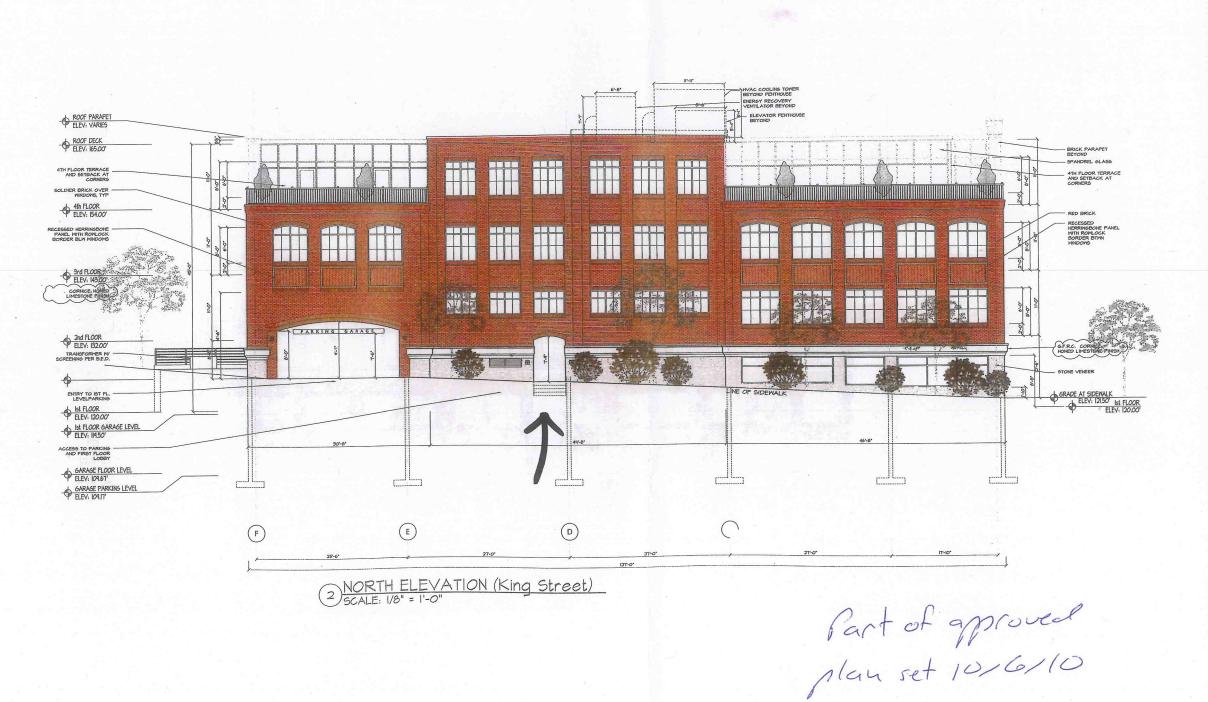
The applicant is seeking approval of as-built changes to the King Street façade of the recently completed office building at 180-188 Battery Street (zoning permit 10-0601CA/MA). Specifically, the applicant is requesting approval to gate off and effectively eliminate the pedestrian entrance facing King Street. There is also a change to the approved building vents adjacent to the eliminated pedestrian entrance. Rather than two smaller rectangular vents, there is now one larger square vent.

The building as constructed largely reflects the approved project plans and is a marked improvement over the previous site conditions. The vent change noted above is relatively minor and acceptable. The proposed elimination of the King Street pedestrian entrance is not. As reflected in the two staff reports, associated DRB meeting minutes, and final DRB decision, this pedestrian entrance was part of the applicant's response to DRB and public comment to liven up the King Street façade and to effectively render it a second primary façade. The outside appearance of the pedestrian entry is as approved; however, it was not constructed as a functional entry, and the applicant wishes to close it off with a gate. Doing so would eliminate a key component in making this building's King Street façade inviting and pedestrian friendly. Rather than gate it off, the entry should be made functional as approved. (Adverse finding)

II. Reasons for Denial

1. Per adverse finding Sec. 6.3.2 (d).



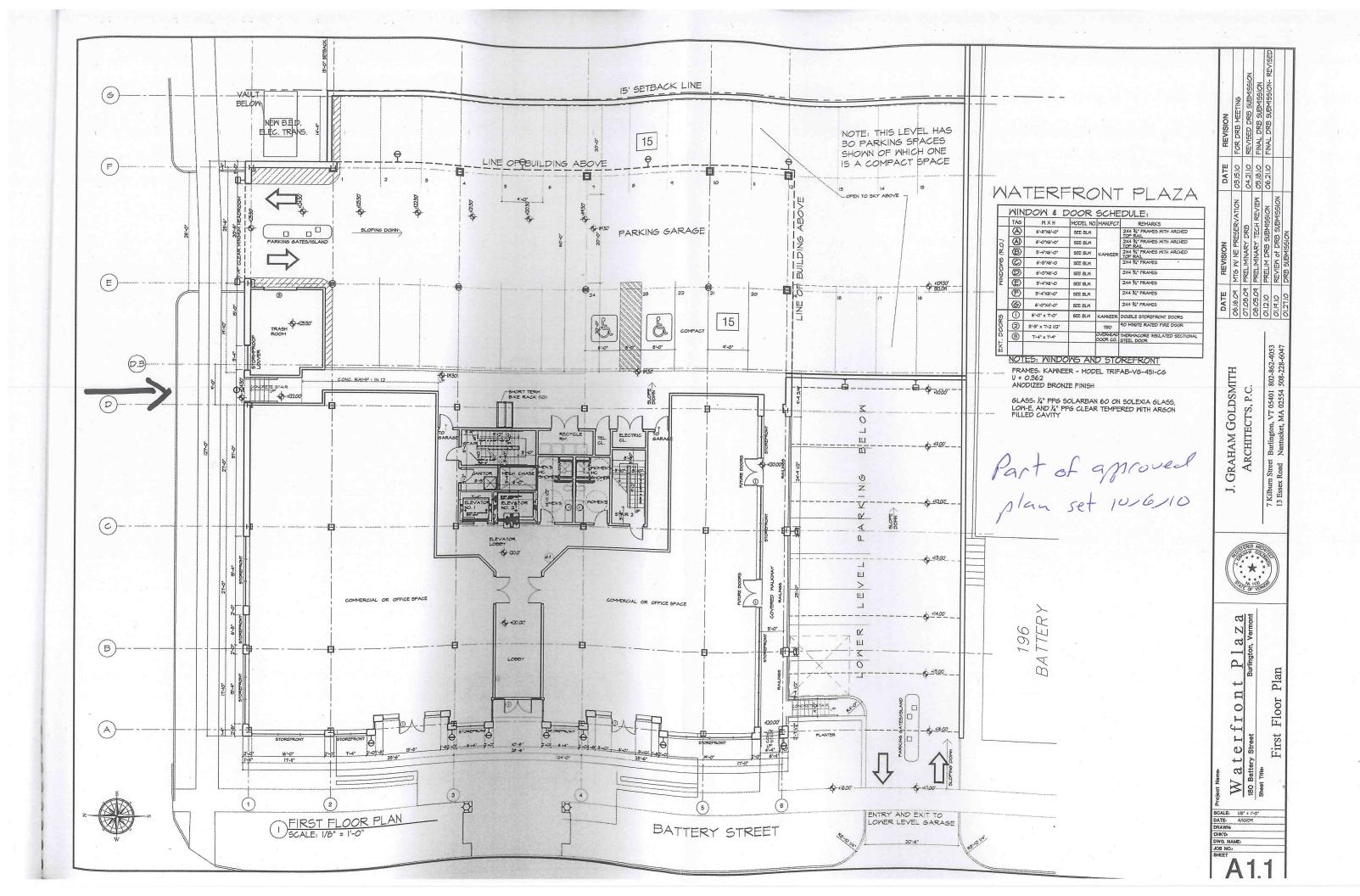




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Department of Planning and Zoning

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Burlington Development Review Board

Minutes/Findings of Fact July 26, 2010

In RE:

10-0601CA/MA; 180-188 Battery St. (Ward 5, BST) (Tax Lot No. 049-1-070-000)

Owner/Applicant: Investors Corporation of Vermont

Request: Demolish two buildings and underground storage containers and construct new four story office building with parking

Members Present:

Michael Long Jonathan Stevens Brad Rabinowitz Bob Schwartz Kevin Stapleton Paul Henninge

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant proposes to redevelop two existing parcels with the construction of a commercial office building bound by Battery and King Streets within the Battery Street Transition District (BST). The proposed structure is a 44' 8" high (utilizing bonus provisions), multi-story building with one level of subterranean parking and another level of parking at grade level. The building will feature mostly office space; however, two ground-level units along Battery Street may contain retail space.

The parking areas of this facility will utilize two (2) entries; a single entry will be from Battery Street and will service entry/exit to the subterranean level of parking. Another entry/exit will be from King Street and will service the open air parking level. This building will feature multiple grade level entries; however, the main entrance will face Battery Street. The streetscape will include utility lines placed underground, realignment of new concrete sidewalks, and installation of pervious "eco-pavers."

The proposed building has a useable square footage total of 44,967 gross square feet, plus a 92 vehicle parking structure. The existing vacant structures total 13,424 square feet.

The Design Advisory Board reviewed the proposal on February 9, 2010 and recommended approval subject to the following conditions:

- 1. An updated account of the results of the CAP (corrective action plan) and a determination regarding the subject site should be provided.
- 2. The stormwater and erosion control plans will have to be incorporated into an Erosion Prevention and Sediment Control Plan (EPSC) as required under Chapter 26 for a major impact development and must be reviewed by the Stormwater Administrator.
- 3. Outdoor lighting details (fixtures, locations, and illumination levels) are needed.
- 4. Details are needed for the new street trees, as is acceptance by the City Arborist.
- 5. Approval from the City is required for any plaza or seating area within the public ROW.
- 6. Details about the specific energy efficiency methods that are proposed to obtain LEED certification should be provided.
- 7. Exterior building materials need to be clarified. A materials palette would be very helpful.
- 8. Clarification as to the location of mechanicals.
- 9. Fire Marshal approval of emergency vehicle accessibility is needed.
- 10. A deeded easement or other instrument acceptable to the city attorney for the use of the parking spaces by the public must be provided in order for the development to obtain the proposed height bonus.

Revised plans and information have been submitted to reflect the DAB recommendations as noted in the findings below. Condition 10 is moot, as the applicant is no longer seeking a height bonus as related to public parking.

The Conservation Board reviewed the proposal on March 1, 2010 and supported the project subject to the standard stormwater and erosion control conditions for all major impact projects (per Chapter 26: Wastewater, Stormwater, & Pollution Control). The Board also advised the applicant to evaluate the underground PCE plume and recommended that the applicant provide an easement for city use, or convey to the city, the finger of land abutting the pocket park on South Champlain Street.

The applicant is amenable to these recommendations and has submitted a stormwater management and erosion control plan. It has now been reviewed and approved by the Stormwater Administrator. Information submitted since the DRB's May 18, 2010 review addresses the nearby PCE plume. The applicant will allow city use of the finger of land abutting the pocket park on South Champlain Street.

The Development Review Board reviewed this application on May 18, 2010 and identified a number of concerns. The Board tabled the application to allow the applicant additional time to address the following items:

- 1. What is being done to address the loss of 24 parking spaces currently being used by neighboring properties?
- 2. Does stormwater need to be pumped into city system or can gravity be used?
- 3. How will excavation affect the PCE plume? What is being done to address PCE in the finished building?
- 4. Strengthen the King St façade make it a second primary façade.
- 5. Address the job attraction/retention bonus.
- 6. Provide greater detail with respect to the interaction between pervious pavers/pavement and the PCE plume. Provide a barrier under the pervious pavers/pavement.

- 7. Provide clarity on the RH/BST zone boundary.
- 8. Provide VT DEC documentation re: the PCE plume and corrective action plan.
- 9. Provide noise information on garage vents and rooftop mechanicals.
- 10. Clarify on-street parking (what's newly proposed?).

Revised project plans and additional information has been submitted by the applicant to address the foregoing items as noted in these findings.

Previous zoning actions for this property are noted below.

- 3/26/04, Approval for parallel sign
- 3/26/04, Approval to install an awning
- 6/24/99, Approval to renew permit for an automobile repair/training facility
- 2/13/97, Approval for 9-space parking waiver associated with change in use to automobile repair/training facility
- 6/3/96, Approval to establish retail use
- 6/15/93, Approval to install parallel sign
- 3/15/93, Approval to establish retail use
- 7/30/91, Approval to install two parallel signs
- 10/20/88, Approval for parallel sign
- 10/14/88, Approval to replace existing door and stairs
- 10/26/87, Approval to install three parallel signs
- 3/5/85, Approval for parallel signs
- 1/31/85, Approval to install new front door and stairs
- 11/9/84, Approval to establish marine retail store
- 4/7/84, Approval for parallel sign
- 3/23/84, Approval to construct new doorway on King Street facade
- 12/23/83, Approval to convert portion of warehouse to retail use
- 8/14/75, Approval to install 4,000 gal. underground gasoline tank and associated pump

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Sec. 3.5.6, Review Criteria

(a) Conditional Use Review Standards

1. The capacity of existing or planned community facilities;

The proposed building will be served by municipal water and sewer. Sufficient capacity is available and has been confirmed in writing from the Department of Public Works. A state wastewater permit will also be needed prior to construction. As noted in Sec. 5.5.3, a stormwater management system is proposed and will provide attenuation and treatment of stormwater prior to controlled discharge into the city system. (Affirmative finding)

2. The character of the area affected;

The subject property is located within the Battery Street Transition zone and is surrounded by a mix of commercial properties. Some residences are also present in the neighborhood. The scale of buildings in the area varies considerably. The proposed office structure would be one of the larger buildings in the immediate neighborhood; however, it remains within the established scale of buildings in the area as articulated under Sec. 6.3.2 of these findings. (Affirmative finding)

3. Traffic on roads and highways in the vicinity;

A brief traffic report has been provided. Anticipated peak hour trip ends (70) are below the threshold (75) requiring a full traffic analysis. Level of service at the King and Battery Street intersection is moderately affected by the proposed development with a decline from LOS B to C southbound on Battery Street. Traffic queues may block access into/out of the site on rare occasion. Public Works has reviewed the traffic report and requires that the traffic signal at the Battery Street/King Street intersection be modified to include pedestrian actuation. (Affirmative finding as conditioned)

4. Bylaws then in effect;

As per the findings herein and as conditioned, the project is in compliance with all applicable zoning bylaws. (Affirmative finding)

5. Utilization of renewable energy resources;

There is no indication that this development will utilize renewable energy resources. Given its ample southern and western exposure, it may be a good candidate for solar energy. In any event, the project will not adversely impact the potential use of alternative energy by neighboring properties. LEED certification will be pursued. (Affirmative finding)

6. Cumulative impacts of the proposed use;

The proposed development will bring additional office space and possibly retail space within close proximity to Burlington's downtown. Little in the way of cumulative impacts are anticipated with the proposed use. Additional traffic will be generated; however, impacts on the existing transportation network will be modest. Public Works will require that the existing traffic signal at the King Street and Battery Street intersection be modified to include pedestrian actuation. (Affirmative finding)

7. Functional family;

Not applicable.

8. Vehicular access points;

The building will be served by two vehicular access points, one on King Street and another on Battery Street. Given the configuration of this corner property and the proposed garage, these two access points are acceptable. (Affirmative finding)

9. Signs;

Outdoor signage is subject to a separate zoning permit.

10. Mitigation measures;

The proposed use will not generate noise or glare sufficient to warrant mitigation. The applicant has submitted sound level information pertaining to the proposed rooftop mechanical equipment and the garage vents. The rooftop cooling tower will have a dB rating of less than 30 (i.e. like a quite whisper) at street level. The garage vents will have a dB rating of 10 (i.e. less than rustling leaves). Lighting is addressed under Sec. 5.5.2. (Affirmative finding)

11. Time limits for construction;

The application indicates that construction will take 12 months. This duration is within the standard time frame afforded zoning permits. Construction hours will be governed by the city's noise ordinance. (Affirmative finding)

12. Hours of operation and construction;

Office and retail uses are permitted in the BST district and do not need to be limited by permit. As noted above, hours of construction need not be specified in this location and will be restricted by the city's noise ordinance. (Affirmative finding)

13. Future enlargement or alterations;

In the event of future enlargement or alteration, permits would be required and reviewed under the regulations then in effect. (Affirmative finding)

14. Performance standards;

Performance standards relating to outdoor lighting and erosion control are addressed under Article 5 of these findings.

15. Conditions and safeguards;

Approval of this project will be conditioned to implement the purposes of the zoning regulations. (Affirmative finding)

- (b) Major Impact Review Standards
- 1. Not result in undue water, air, or noise pollution;

Stormwater management will be substantially improved as part of this application. See Sec. 5.5.3 for details. Air and noise pollution will be as expected for a typical office or retail use. (Affirmative finding)

- 2. Have sufficient water available for its needs; See Sec. 3.5.6 (a) 1.
- 3. Not unreasonably burden the city's present or future water supply or distribution system; See Sec. 3.5.6 (a) 1.
- 4. Not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;

A comprehensive erosion prevention and sediment control plan has been submitted along with a stormwater management plan. The plans have been reviewed by the Conservation Board and the Stormwater Administrator per Chapter 26. The Stormwater Administrator has approved the measures with conditions to be incorporated into this approval. (Affirmative finding as conditioned)

- 5. Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed; See Sec. 3.5.6 (a) 3 for traffic impacts. The proposed office and retail uses will not cause unreasonable congestion or unsafe conditions on nearby sidewalks or bikeways. (Affirmative finding)
- 6. Not cause an unreasonable burden on the city's ability to provide educational services;

The proposed commercial building will have no adverse impact on the city's ability to provide educational services. (Affirmative finding)

- 7. Not place an unreasonable burden on the city's ability to provide municipal services;
 The proposed development will generate additional impacts on city services such as water and sewer and possibly emergency services; however, those impacts are expected to be proportionately modest. Payment of impact fees will help offset impacts generated by the development.

 (Affirmative finding as conditioned)
- 8. Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city; See Sec. 6.2.2 (a) & 6.3.2 (b).
- 9. Not have an undue adverse effect on the city's present or future growth patterns nor on the city's fiscal ability to accommodate such growth, nor on the city's investment in public services and facilities;

The project constitutes redevelopment of an existing commercial site into an office, and possibly retail, building with associated structured parking. It will have no adverse impact on the city's present or future growth patterns. (Affirmative finding)

10. Be in substantial conformance with the city's municipal development plan; The proposed development can be found to be in substantial conformance with the MDP, as per the following:

The proposed development brings new office and retail space into the city's Downtown Improvement District, which is intended to attract and support a wide range of retail and office uses (pg. I-10, Downtown Improvement District).

The project includes a comprehensive stormwater management plan that collects and attenuates stormwater runoff prior to discharge into the city system. It also includes pervious hard surfaces that contribute to onsite stormwater management, rather than shedding runoff into the city streets (pg. II-5, Urban Ecosystems).

The building will strengthen the southeast corner of the Battery and King Street intersection and reinforce this gateway into the city (pg. III-5, Gateways).

The proposed development will contribute to the city's network of street trees and will also include the burying of utility lines (pg. III-9, Street Trees and Locating Utilities).

The new office building will contribute to Burlington's status as a regional growth center and will bring additional jobs into Burlington's downtown area (pg. VI-3, Regional Growth Center & pg. VI-5, Creating New Jobs).

The proposed building will comply with the city's current energy efficiency standards (Sec. VIII). (Affirmative finding)

11. Not have an undue adverse impact on the present or projected housing needs of the city in terms of amount, type, affordability and location;

The proposed commercial building will have no adverse impact on the present or projected housing needs of the city. (Affirmative finding)

12. Not have an undue adverse impact on the present or projected park and recreation needs of the city.

Minimal anticipated impacts on the city's park and recreation needs are anticipated. Payment of impact fees will help offset such impacts. (Affirmative finding as conditioned)

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts:

(a) Purpose

(5) Battery Street Transition District (BST)

The subject property is located in the BST zone, a transition area between the downtown waterfront and nearby residential areas. As noted previously, the proposed building is consistent with the existing scale of buildings in the area and will contain a permitted office use and possibly some permitted retail space. The zoning map depicts the eastern (King Street) parcel as RH (residential high density zoning); however, a zoning administrative interpretation dated March 19, 2010 states that this boundary is incorrectly drawn, and that, in fact, the parcel is within the BST zone. A memo from David E. White, Director of Planning & Zoning, has been submitted to provide detailed information on this matter. Essentially, the line on the December 2007 zoning map between the RH and BST zones was drawn incorrectly between the two properties included in this application. The two properties were included in the WFC-T zone (now BST zone) in the 1994 Zoning Ordinance and were intended to be in the BST zone in the December 2007 Comprehensive Development Ordinance (CDO). The two parcels are on a single deed and have been in joint ownership since at least 1975 and were therefore both included in the WFC-T zone under the 1994 Zoning Ordinance. When the zone boundary was drawn for the CDO along this stretch of Battery Street, it followed parcel lines of those properties fronting Battery Street only, without regard to parcels in joint ownership as should have been done. A correction to the zoning map is pending with the Planning Commission. (Affirmative finding)

(b) Dimensional Standards & Density

A FAR of 3 is allowed in the BST zone. The 0.627 acre property would allow an 81,594 sf building. The proposed development, including the commercial building and garage, is 78,196 sf and is acceptable.

There is no lot coverage limit in the BST zone. The proposed development will entail 85.1% lot coverage.

The proposed building will be set back more than the minimum required 12' from the curb on both King Street and Battery Street. No side or rear yard setbacks are required in the BST zone, except along the district boundary with a residential zone. In this case, the eastern property line of the King Street parcel is the boundary between the BST and RH zones. A 15' setback is required along this boundary. Since DAB review, the parking structure has been revised to comply with this required setback. A strip of landscaped green space now runs along the eastern property boundary.

The proposed building will be 44' 8" tall on average. The southern elevation is the tallest at 45'. This height is over the 35' maximum height in the BST zone but may be allowed by way of height

bonus in subsection (d) 6 below. Note that the building parapet exceeds the roof height but may be permissible as an architectural feature occupying less than 10% of the roof area. The rooftop cooler and elevator tower may be permitted under the same provision. (Affirmative finding)

(c) Permitted & Conditional Uses

Office and retail are permitted uses in the BST zone; however, as a major impact project, it is subject to conditional use review. Such review is included in this application. (Affirmative finding)

(d) District Specific Regulations

1. Use Restrictions

A. Ground Floor Residential Uses Restricted

No residential use is included in this proposal. (Affirmative finding)

B. Residential/Nonresidential Mix Required (Not applicable)

2. Public Trust Restrictions (Not applicable)

3. Facades and Setbacks on Side and Rear Property Lines

The neighboring building to the south is built to the property line shared with the subject development. It has windows facing the proposed development. As a result, a 10' setback is required for new buildings abutting the existing structure. Surface parking and a driveway into the lower parking deck will run along the southern property line and is acceptable. The garage structure will be placed well behind (east of) the neighboring building and, in turn, does not need to meet a 10' setback. (Affirmative finding)

4. Building Height Setbacks (Not applicable)

5. Lake Champlain Waterfront Setbacks (Not applicable)

6. Development Bonuses/Additional Allowances

The application seeks a height bonus under item D, *Job Attraction and Expansion Bonus*, of this criterion. This bonus is offered at 10' and 20' depending on the amount of commercial space proposed. In this case, the applicants propose 100% commercial space – mostly office with some possible retail space – and are therefore eligible for a 20' height bonus. The applicants are seeking a height bonus of just fewer than 10'.

In order to be approved for the height bonus under item D, the Development Review Board must find either that: 1) Such additional height allowance is necessary to accommodate the creation of additional jobs in Burlington which will not be created in the City without such allowance, or 2) Such additional height allowance is necessary to preserve existing employment in Burlington which will be lost to the City without such allowance.

Significant testimony at the May 18 DRB meeting centered on the requested height bonus and whether is it warranted. Most of the testimony centered on whether the proposed development would create new jobs or simply transfer them. As the bonus language is written, job creation in the City can be totally new jobs (as in expanding a business) or existing jobs from elsewhere that come into the City. The point is to bring additional employment into Burlington. The bonus language also refers to job retention - to keep existing jobs in Burlington. In order to qualify for the additional height under the Jobs bonus, the DRB must find affirmatively that either new jobs will be created or come into Burlington or that existing jobs will be retained. A memo from the Planning & Zoning Director has been submitted to elaborate on the intent of the Job Attraction and Expansion Bonus and qualifying for it.

Testimony at the May 18 hearing also questioned the need for additional office space in Burlington. The applicant has provided information gleaned from a June 2010 Allen & Brooks report to address the existing supply of, and need for, Class A office space downtown. While the overall office vacancy rate downtown is 8.3%, Class A office vacancy is just 3.1% with none of that space exceeding 10,000 sf. Companies needing larger office spaces looking to stay and expand in Burlington, or come to Burlington, have extremely limited options under current conditions. The proposed building would contain large Class A office units aimed at addressing this shortage.

The proposed commercial building is aimed at addressing an identified shortage in Burlington's downtown office market. At least two employers are looking to occupy and expand into the large office spaces to be provided. As a result, the project warrants the requested 10' height bonus. (Affirmative finding)

Article 5: Citywide General Regulations Sec. 5.2.3, Lot Coverage Requirements See Sec. 4.4.1 (b) above.

Sec. 5.2.4, Buildable Area Calculation (Not applicable)

Sec. 5.2.5, Setbacks See Sec. 4.4.1 (b) above.

Sec. 5.2.6, Building Height Limits See Sec. 4.4.1 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations See Sec. 4.4.1 (b) above.

Sec. 5.4.8, Historic Buildings and Sites

(d) Demolition of Historic Buildings

1. Application for Demolition

All required materials have been submitted in application for the historic buildings. (Affirmative finding)

2. Standards for Review of Demolition

The historic buildings onsite have experienced significant deterioration; however, their condition is not the primary reason for demolition. The applicant has submitted a comprehensive historic analysis of the property and structures along with an economic feasibility study. In short, the buildings are not particularly significant and cannot be rehabilitated as part of a reasonably beneficial economic use of the property.

Redevelopment of the site is proposed in such a way as to relate well to the existing built environment in the area and minimizes impacts on remaining historic buildings. Redevelopment as proposed brings the property towards the use and intensity of development intended for this mixed use downtown district.

As required, the existing buildings have been properly documented.

The demolition is proposed in conjunction with redevelopment of the property with a new office building and associated site improvements. The property will not be left vacant. (Affirmative finding)

3. Deconstruction: Salvage and Reuse of Historic Building Materials
The applicant is encouraged to make materials from the historic buildings available to others for salvage. (Affirmative finding as conditioned)

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. (Affirmative finding)

Sec. 5.5.2, Outdoor Lighting

Outdoor lighting information has been revised; however, the fixtures in the specification sheets submitted in March 2010 do not appear to match those in the photometric plan done in April or as currently revised. In addition, the most recent photometric plan includes an additional new fixture (32 W prismatic) with no apparent cutsheet provided. Cutsheets for all proposed outdoor lighting fixtures are needed.

The proposed fixtures utilize acceptable LED, CFL, or metal halide bulbs. Whether the fixtures are cutoff or not cannot be determined until cutsheets for all fixture types are submitted. The revised photometric plan depicts illumination levels of 6.4 footcandles over the center Battery Street entrance. This level is somewhat over the 5.0 footcandle limit and needs to be lowered. Walkway illumination levels average 1.6 footcandles. While substantially lower than previously proposed, it exceeds the maximum average permissible of 0.5 footcandles with no one point exceeding 2.0 footcandles. The outdoor parking and circulation areas illumination levels are now compliant with the maximum illumination level of 4.0 footcandles at any one point. Outdoor lighting levels have generally improved; however, illumination levels for the walkways and main entrance still need to be revised downward. (Affirmative finding as conditioned)

Sec. 5.5.3, Stormwater and Erosion Control

A stormwater management plan has been provided and has been reviewed and approved by the Conservation Board and the Stormwater Administrator. Conditions stipulated by the Stormwater Administrator are incorporated into this approval. Stormwater will be collected and directed into an underground tank. After settling, water will discharge from the tank into the city system at a

controlled rate. Due to the 0.2% slope of drainage from the lower garage level into the city's combined sewer system, a pump will be utilized rather than gravity. Pervious pavers will be installed in front of the main entrance on Battery Street. Geotextile fabric is optional based on soil conditions with the selected pavers. During its initial review of the project, the DRB questioned whether fabric should be installed to provide a barrier between the PCE plume and the pervious material. The applicant has responded that fabric is not needed in this case and won't be installed. PCE presence on the property is minimal and is below the regulatory threshold. Based on a cross section provided by the applicant, there is approximately 2.5' separation between the pavers on the surface and native soil underneath. Stormwater infiltrated through the pavers will be collected by way of underdrain and directed into the onsite stormwater system.

An erosion prevention and sediment control (EPSC) plan has been reviewed and approved by the Stormwater Administrator. (Affirmative finding as conditioned)

Article 6: Development Review Standards: Part 1, Land Division Design Standards Not applicable.

Part 2, Site Plan Design Standards Sec. 6.2.2, Review Standards

(a) Protection of important natural features

No trees or other significant vegetation will be removed as part of this proposal. There are no significant natural areas on the property. (Affirmative finding)

(b) Topographical alterations

The site slopes downward from east to west with a grade change of about 10 feet. Significant excavation is proposed for the building and associated parking structure; however, the end result at grade will be little different from existing conditions. (Affirmative finding)

(c) Protection of important public views

No public views of Lake Champlain and the Adirondack Mountains or of the Green Mountains are significantly affected by development. Views from private property are not considered under this criterion. (Affirmative finding)

(d) Protection of important cultural resources

There are no known pre-historic archaeological resources on the property. However, the subject property contains historic structures. A detailed analysis of these structures was prepared by the applicant's consultant. A review and comments on this report regarding these structures are addressed under Sec. 5.4.8. (Affirmative finding)

(e) Supporting the use of alternative energy

It is the intent of the developer to achieve LEED certification from the U.S. Green Building Council. The applicant has submitted an outline of items to be incorporated into the construction in pursuit of LEED certification. There is no indication that alternative energy will be utilized; however, the building will have ample solar exposure to the south and west. Natural light will reduce the need for artificial lighting inside the building. (Affirmative finding)

(f) Brownfield sites

The subject property is not included on the Vermont DEC's Hazardous Site List; however, given the historic uses of the site and other nearby properties with hazardous waste problems, a Phase I Environmental Site Assessment (ESA) was conducted for the site in 2003. Three underground storage tanks were removed or closed in place in 2002. No evidence of contamination was found in the vicinity of two of the tanks. Limited contamination was found in the vicinity of the third tank. The site was removed from the Hazardous Site List because of the low threat to receptors. The ESA concluded that there is "no evidence of recognized environmental conditions on site that warrant further investigation." Indoor air sampling at the nearby 151 South Champlain Street site indicates the presence of some contaminants exceeding EPA Risk Based Concentrations. The contaminants (i.e. the PCE plume) are related to the past use of the site for dry cleaning. A Corrective Action Plan (CAP) for nearby sites was developed. The subject property at 180 Battery Street was not included on this list. As requested by the DRB and its advisory boards, the applicant has provided information to address the PCE plume both during construction and post-construction.

During construction, soil and air analyses will be conducted to determine whether soils are contaminated and whether vapors are present. If contaminants are detected, protective actions will be taken according to applicable state and federal regulations. Although not required to do so, the applicants will construct the proposed building with an under-slab vapor barrier system that will serve to limit vapors traveling into the building. The under-slab system will ventilate any ground PCE (or other) vapors that may encroach into the site. The system will exhaust at least 10' above pedestrian walkways. Testimony from an official of the VT DEC addressed these matters at the July 6 DRB hearing. (Affirmative finding)

(g) Provide for nature's events

See Sec. 5.5.3 for stormwater management. Provision for snow storage has not been indicated; however, there is some room available in the green space to be provided along the eastern boundary. (Affirmative finding)

(h) Building location and orientation

The site is a corner lot fronting on the south east corner of Battery and King Streets with existing buildings to the east (35 King St.) and south (196 Battery St.). The main entrance appropriately fronts on Battery St. and includes large glass windows that address the frontage. A pedestrian circulation plaza and seating area is located within the front entrance area on Battery Street. The south and east elevations are rear in nature and design. The north elevation faces King Street and has been significantly revised to serve as a second front façade. As recommended by this criterion, the proposed building is placed near the intersection and parallel to the street in order to help anchor the corner and to take advantage of the high visibility location. Sight lines at the intersection remain adequate as confirmed by the Department of Public Works engineering division. (Affirmative finding)

(i) Vehicular access

The proposed parking areas will be served by two vehicle access points. The lower level of the parking garage will provide spaces for 62 vehicles which will enter/exit from Battery Street and the upper level of parking will provide spaces for 30 vehicles which enter/exit from King Street. The sidewalks will be re-constructed and placed in-line with the existing sidewalk on both Battery and King Streets. (Affirmative finding)

(j) Pedestrian access

A pedestrian circulation plaza and seating area is located at the front entrance area on Battery Street. Pedestrian access into the proposed building will be provided via this main entry. Any portions of the plaza and benches in the public ROW will have to obtain appropriate approvals from Public Works, Parks & Recreation, and/or the City Council as may be required. Sidewalks are depicted crossing the garage entry driveways along both streets. (Affirmative finding)

(k) Accessibility for the handicapped

Several handicap parking spaces are depicted in the proposed garage in close proximity to the elevators. It is the applicant's responsibility to comply with all applicable ADA requirements. A handicap space is shown in the Battery Street ROW, but no accessible curb cut evident. In any event, the Department of Public Works has stipulated that no new onstreet parking be included in this project as noted in Sec. 8.1.8 below. (Affirmative finding as conditioned)

(1) Parking and circulation

As recommended by this criterion, parking will be placed to the side and rear of the structure. Much of it will be placed inside and under the building. Parking at the surface level is set back from the front line of the building as required along Battery and King Streets. Relatively little surface parking (9 compact spaces along Battery Street) is included in this proposal. Given sight constraints and the proximity of the neighboring building to the south, no shade trees are proposed for this surface parking area. Shade trees are recommended but not required. The adjacent building to the south will likely provide the recommended 30% shading for these surface parking spaces. If feasible, shade trees should be planted along the southern property line east of the adjacent building and west of the parking garage. Note that 6 Princeton elms to be planted along the eastern property line will provide shading of the adjacent surface level spaces in the parking garage; however, as these spaces are part of a structure, they are not included in the shading provision of this criterion. (Affirmative finding as conditioned)

(m) Landscaping and fences

Given the site's location in a downtown mixed use zone, relatively little green space is proposed. The 15' wide strip of green space along the eastern property line will be planted with new trees and shrubs. Other new landscaping will be concentrated around the building's main entrance. New street trees (red maples) are also proposed along Battery and King Streets. These street trees have been reviewed and approved by the City Arborist. No new fencing is proposed. (Affirmative finding)

(n) Public plazas and open space

As noted, a plaza with seating and plantings is proposed in front of the building along Battery Street. This plaza will have ample exposure to the sun. Shadow impacts on the proposed plaza are expected to be limited to the morning hours. (Affirmative finding)

(o) Outdoor lighting See Sec. 5.5.2.

(p) Integrate infrastructure into the design

Trash and recycling rooms are within the central core service area. Any new utility lines will be buried. A new transformer is proposed at the northeast corner of the proposed building. It will be screened with a series of new cedars. (Affirmative finding)

Part 3, Architectural Design Standards Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The size of the proposed building, particularly its height, was the subject of significant testimony at the May 18 DRB meeting. A number of individuals asserted that the proposed height of almost 45' was too tall as related to other neighborhood buildings. As noted in Sec. 4.4.1 (d) 6, a height bonus of about 10' is sought to allow the proposed height. When viewing existing buildings along Battery Street in this neighborhood, particularly along the eastern side, it quickly becomes evident that the buildings are in the 2-3 story range. The proposed building would be 1 story taller at 4 stories. This height does not overwhelm existing structures in the neighborhood, particularly when considering that neighboring buildings on either side of the proposed building are 3 stories tall. A sight line study has been submitted that depicts minimal visual impacts as viewed from the harbor. The building has been revised to incorporate additional articulation along the Battery Street and especially the King Street facades in order to offset its overall massing and scale. The top story along King Street has been pulled back at both the eastern end western ends of the structure as further mitigation of its height, massing, and scale.

Efforts have been made as depicted in the revised plans to lessen the appearance of the building's massing, height, and scale. The apparent mass and scale of the proposed building has been successfully broken into smaller parts by varying materials and planes along the façade and by providing distinct building elements such as the entryway plaza terraces. Height has been mitigated by top story setbacks along both King Street and Battery Street. The structure as proposed is consistent with the expected development in the BST district and relates well to the existing development pattern along this stretch of Battery Street and into lower Maple Street. (Affirmative finding)

2. Roofs and Rooflines

The proposed building will have a flat roof, which is common in the downtown. The roofline is varied by way of top story setbacks and parapets. (Affirmative finding)

3. Building Openings

The Battery Street façade has been revised to incorporate three recessed entries. Storefront windows provide visual access into the ground level interior of the building. A plaza provides visual and functional reinforcement to these entries. The King Street façade has been modified to include a new pedestrian entrance into the building and parking garage. An archway has been incorporated into the garage entrance and relates to the arched windows on the King Street and Battery Street building facades. Variations in fenestration throughout the building contribute to splitting the building into distinct sections – ground level, mid levels, and top level. (Affirmative finding)

(b) Protection of important architectural resources

The subject property contains historic structures. These structures will be demolished and replaced by the new office building. See Sec. 5.4.8 for details.

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The proposed building successfully provides an active and inviting street edge along Battery Street. Per this criterion, it integrates a mix of architectural features and materials with a plaza entry along the ground level. Fairly extensive glass along the ground level provides visual access into the interior of the building. This ground level glass will not be tinted, frosted, or mirrored. As noted previously, the two ground level commercial units along Battery Street are designated for office or retail use. Retail is encouraged and would add to the street-level attraction of the proposed building.

The other street elevation, King Street, has been revised to include a new entry into the building as noted above. It has also received greater architectural articulation and detail in the way of additional arched windows and garage entrance, a recessed top story and terrace, and ornamental brick work. Storefront glass continues to wrap around the King Street façade at its western end. (Affirmative finding as conditioned)

(e) Quality of materials

The patterns of off-white and red brick have been modified; however, the materials palate remains unchanged. The building will be clad in sections of red and off-white brick. Stone veneer will be used on the foundation. Spandrel glass will be installed along the top floor. A precast concrete cornice will be installed along the top of the 1st story. Bronze frame windows will be installed. These materials are of high quality and will extend the life expectancy of the proposed building. Colors samples of the concrete cornice band and of the windows are needed. The concrete band shall not be plain white. (Affirmative finding as conditioned)

(f) Reduce energy utilization

Abundant windows will allow ample sunlight into the building interior. The applicant is seeking LEED certification for the building and will incorporate various energy efficiencies into the construction. The building must comply with the city's current energy efficiency requirements. (Affirmative finding as conditioned)

(g) Make advertising features complimentary to the site

A sign plan or tenant signs are expected. The western building elevation includes a sign band. While individual signs would require separate zoning permits the ground level concept for signs appears acceptable. Note that the King Street garage entry now includes a proposed "Parking Garage" sign. (Affirmative finding)

(h) Integrate infrastructure into the building design

Most mechanical equipment will be located inside the building. A rooftop cooling tower and energy recovery ventilator are depicted on the elevation drawings and will be screened with mesh enclosures. In the event that mechanical garage ventilation is needed, details must be provided. (Affirmative finding as conditioned)

(i) Make spaces safe and secure

The building entrance is clearly visible. The building appears readily accessible by emergency vehicles along the both the north (through the parking area) and along Battery Street. Fire Marshal

approval of the building's accessibility by emergency service vehicles has been obtained. (Affirmative finding)

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the Downtown parking district. The 45,000 sf building requires 90 parking spaces (i.e. 2 spaces per 1,000 sf of office space). The proposed parking garage will contain 92 spaces. Of the 92 total parking spaces, 12 (13%) are compact spaces. Compact spaces may account for up to 15% of total parking per Sec. 8.1.12, (h) Compact Car Parking.

Testimony has been provided asserting that some of the existing parking spaces are dedicated to neighboring properties. The applicant has responded that none of the existing parking spaces are subject to a long term lease, and none are required by way of permit. A search of the zoning files of neighboring properties supports this assertion. The applicants will continue to offer parking to individuals who wish to park in their parking garage at Main and College Streets.

Insofar as onstreet parking is concerned, the project plans depict several new onstreet spaces in front of the building along Battery Street and King Street. The DRB requested clarification as to the number and configuration of new onstreet parking. Since the May 18 DRB meeting, the applicant has consulted with the Department of Public Works on a variety of onstreet parking scenarios. Ultimately, DPW directed the applicants <u>not</u> to provide onstreet parking as part of the development. Onstreet parking may be implemented post-construction by way of DPW's standard procedures. All references to onstreet parking must be removed from the project plans. (Affirmative finding as conditioned)

Sec. 8.1.10, Off-Street Loading Requirements (Not applicable)

Sec. 8.1.11, Parking Dimensional Requirements

All full size parking spaces are 9' X 20' as required, and compact spaces are 8' X 18' (or 20'). Back-up space of 20' length is provided throughout, whereas 24' is the standard distance. The length of back-up space may be reduced by the DRB due to site topography, location of existing or proposed structures, etc. per this criterion. In this case, the constraints of the lot and the required 15' setback along the eastern property boundary necessitate the shorter back up length. The 20' length does allow sufficient room for 2-way circulation. (Affirmative finding)

Sec. 8.1.12, Limitations, Location, Use of Facilities (a) Off-Site Parking Facilities (Not applicable)

(b) Downtown Street Level Setback

As required by this criterion, grade-level parking is setback from the front property lines along both King Street and Battery Street. (Affirmative finding)

(c) Front Yard Parking Restricted (Not applicable)

(d) Shared Parking in Neighborhood Parking Districts

(Not applicable)

- (e) Single Story Structures in Shared Use Districts (Not applicable)
- (f) Joint Use of Facilities (Not applicable)
- (g) Availability of Facilities

The parking to be constructed as part of this development will be for the exclusive use of employees and customers. It will not be used for the storage or display of vehicles or materials. (Affirmative finding)

(h) Compact Car Parking See Sec. 8.1.8.

Sec. 8.1.13, Parking for Disabled Persons

A number of handicap parking spaces are proposed and comply with the minimum dimensional requirements and location next to access isles of 5' width. These spaces shall be marked and signed as required for handicap spaces. (Affirmative finding as conditioned)

Sec. 8.1.14, Stacked and Tandem Parking Restrictions (Not applicable)

Sec. 8.1.15, Waivers from Parking Requirements/Parking Management Plans (Not applicable)

Sec. 8.2.5, Bicycle Parking Requirements

The proposed building requires 11 long term bicycle parking spaces and 5 short term bicycle parking spaces. The garage floor plan depicts a locker room for 10 bicycles for long term bike parking. One additional long term space is needed. The first floor plan depicts a bike rack under cover with room for 10 bikes. (Affirmative finding as conditioned)

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Brad Rabinowitz

I move that the Board grant Certificate of Appropriateness and Major Impact approval to demolish two buildings and underground storage containers and to construct a new four story office building with parking, located at 180-188 Battery Street in the BST zone in accordance with Articles 3, 4, 5, 6, and 8. The Board adopts the findings set forth above. Approval is subject to the following conditions:

- 1. **Prior to release of the zoning permit**, a revised lighting plan shall be submitted subject to staff review and approval. Illumination levels for the walkways and main entrance shall be revised downward to a level of compliance with Sec. 5.5.2.
- 2. **Prior to release of the zoning permit,** revised plans shall be submitted that remove all references to new onstreet parking, subject to staff review and approval.
- 3. **Prior to release of the zoning permit,** plans for mechanical garage exhaust/ventilation (if proposed) shall be submitted, subject to staff review and approval.
- 4. **Prior to release of the zoning permit,** color samples of the concrete band (not to be pure white) and of the windows shall be submitted, subject to staff review and approval.
- 5. **Prior to release of the zoning permit,** a revised long term bike parking area shall be submitted that depicts spaces for 11 bikes, subject to staff review and approval.
- 6. **Prior to release of the zoning permit**, a letter of credit or escrow agreement shall be executed with the City of Burlington for all construction site stormwater management and erosion control measures. The agreement shall be in an amount sufficient to cover the complete cost of administration and construction associated with remedying a problem associated with construction site stormwater management or erosion control. The standard forms for the letter of credit or escrow agreement are available at the Planning & Zoning Department.
- 7. At least 7 days prior to the issuance of a certificate of occupancy, the applicant shall pay to the Treasurer's Office the impact fee as calculated by staff based on the net new square footage of the proposed development.
- 8. **Prior to issuance of a certificate of occupancy**, the project engineer must certify in writing that, among other things, the project EPSC plan as approved by the Department of Public Works has been complied with and final site stabilization has occurred. This certification shall be filed with the Department of Planning & Zoning.
- 9. **Prior to issuance of a certificate of occupancy,** the traffic signal at the intersection of King Street and Battery Street shall be modified to include pedestrian actuation, subject to review and approval by the Department of Public Works.
- 10. The applicant will negotiate with the Department of Parks & Recreation to allow City use of the southeast "finger" of land abutting the City's pocket park on South Champlain Street as proposed in the July 1, 2010 letter from Barbara Surprenant to Scott Gustin and the Development Review Board.
- 11. This project is subject to all standards contained in Chapter 26 pertaining to "major impact" projects. Specific conditions relating to Sec. 5.5.3 of the CDO and Chapter 26 are:
 - a) Erosion Prevention and Sediment Control Plan Condition: At all times after the initiation of land disturbance, this project must comply with the attached Chapter 26: Erosion Prevention and Sediment Control conditions of approval, dated 5/18/2010. Verification of compliance with these conditions must be obtained from the DPW Stormwater Program prior to the issuance of a Final Certificate of Occupancy.
 - b) Stormwater Management Condition: This project and property must comply with the attached Chapter 26: Stormwater Management Plan conditions of approval, dated 5/18/2010, including any on-going requirements for post-construction. Verification of compliance with the conditions must be obtained from the DPW Stormwater Program prior to the issuance of a Final Certificate of Occupancy.
 - c) Stormwater Management Maintenance Agreement: Prior to construction, the applicant must enter into an agreement with and receive approval from DPW regarding the installation, long term maintenance and any liability issues related to

- the installation of pervious pavers within the City Right of Way. See the Post Construction Stormwater Management
- d) This approval incorporates the Post Construction Stormwater Management Plan Acceptance dated 5/18/10 and the Erosion Prevention & Sediment Control Plan Acceptance also dated 5/18/10.
- 12. A State of Vermont wastewater permit is required.
- 13. The applicant is encouraged to make materials from the historic buildings available to others for salvage.
- 14. The applicant is encouraged to plant shade trees along the southern property line east of the adjacent building and west of the parking garage to shade 30% of the abutting surface parking area.
- 15. Retail use is encouraged in the street level Battery Street commercial units.
- 16. All new utility lines shall be buried.
- 17. The proposed structure shall comply with Burlington's current energy efficiency standards and with Burlington's current ingress and egress requirements as established by Burlington Electric Department and Burlington Public Works, respectively.
- 18. It is the applicant's responsibility to comply with all applicable ADA requirements. Handicap parking spaces shall be marked and signed as required.
- 19. This property is subject to all applicable nuisance regulations and performance standards in the Burlington Code of Ordinances.
- 20. Standard permit conditions 1 -18.

Seconded: Bob Schwartz

Vote: 6-0-0, motion carried

Dated at Burlington, Vermont, this <u>2644</u> day of July, 2010.

Respectfully Submitted,

Michael Long, Acting Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.

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Burlington Development Review Board

149 Church Street, City Hall Burlington, VT 05401

www.ci.burlington.vt.us/planning/drb/

Telephone: (802) 865-7188

(802) 865-7195 (FAX) (802) 865-7142 (TTY) Austin Hart Glenn Jarrett Eleanor Briggs Kenworthy Michael Long Kevin Worden Jonathan Stevens Brad Rabinowitz Paul Henninge (Alt.) Bob Schwartz (Alt.)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, July 6, 2010 - 5:00 p.m., Contois Auditorium City Hall, 149 Church Street, Burlington, VT MINUTES

Present: Austin Hart (Chair), Michael Long, Brad Rabinowitz, Jonathan Stevens, Bob Schwartz, Kevin

Stapleton, Paul Henninge (Alt.)

Staff: Scott Gustin, Nic Anderson

Absent: Jim Drummond

I. Agenda

No changes.

II. Communications

5 items. Received and accepted by the board.

III. Minutes

Three sets. Will deliberate later.

IV. Public Hearing

10-0713CA/CU; 82 Shelburne Street (RL, Ward 6) David Simendinger
 Convert non-conforming use to three apartments. Continued hearing (Project Manager, Mary O'Neil)

Applicants present. Dave Simendinger. Eric Simendinger. Jamie Simendinger. Shocked that this project has been scheduled for tabling. There is nothing new since last done. Another site assessment has been done since March 2009. It is required to be done quarterly. Should not rely on first sentence. Discussed release. Have done significant testing and there is no new release. J. Scmelzer made it clear they are independent of this process. No free floating product. Monitored twice per year. Big unknown is what might happen within development. Willing to not occupy facility until every agency is signed off and says they are safe to occupy. Still active motor service station. Want the permit so they can start removing concrete and check all soils and replace all sewer lines etc. Investigation cannot be undertaken until they start digging.

A. Hart have only just seen this.

- D. Simendinger need to tear out flooring to discover and set up remediation plan.
- A. Hart asked if they would like to close tonight and condition that they have sign off from other agencies.
- D. Simendinger correct, happy with condition to not occupy. Reiterated everyone will have better understanding if they start.
- M. Long asked about dates on the memo.
- D. Simendinger confirmed it was 15 months ago.
- B. Rabinowitz noted in letter, if appealing decision have to be done within timeframe.
- D. Simendinger was appealed and waiting on that. Covered changes that have been deal with. Confirmed that the site coverage has been changed to be within. Tanks will not be an issue in time. At the moment stable and not moving off site. Parking reduced.
- A. Hart are you still comfortable with 7 instead of 8 parks.
- D. Simendinger yes. Hope that it can be approved as is.

- M. Long asked appellants. From the plan shows that it can be used. Your view is that it will be unusable.
- A. Prine, it will be a driveway but couldn't use it as a parking space as it will be unusable in terms of access and opening car doors.
- K. Goulette, will not be useable solution.
- M. Long asked if they have seen pins.
- K. Goulette. Not clear, they would like to see professional survey. This is the only driveway they have and will be unusable. If you look at photos and affidavits, they state that lilac trees have been recognized with those and fence in back. This lines up with curb cut.
- A. Prine if there was an error this was done in the time of construction and that was the 50s.
- A. Hart asked if they have a problem with the 12 inch setback.
- A. Prine, yes they have issue.
- A. Hart asked but then withdrew.
- K. Goulette, pointed out that they would allow usage but wanted money in exchange and didn't think that was a good solution. 3 ft high fence would not allow privacy. Haven't seen a professional survey. Would like DRB to be silent until the issue is resolved.
- A. Hart closed public hearing. Have enough to make the decision. Will deliberate later.



3. 10-0601CA/MA; 180-188 Battery Street (BST, Ward 5) ICV Construction, Inc.

Demolish existing buildings and construct new four story office building with parking structure (continued hearing, date changed from July 20, 2010). (Project Manager, Scott Gustin)

A. Hart recused.

Applicants present. B Surprenant, David G White, Graham Goldsmith and Michelle Bellerjeau (architects), Skip Williams, Mike Brouillard, Jeff Padgett.

D. G. White - Following last meeting they provided information. Will focus on two areas, one height, two design changes in response to feedback from last one. Height breaks down into two topics. Jobs attraction bonus and context of the building.

Jobs attraction. Concur with staff's interpretation of bonus. Question is whether or not you need to have a specific tenant. With most office developments, the tenants normally need 6-18 months to search and move. It doesn't allow for tenants to sign a lease for something that is being developed which may take 3-5 years assuming there are no appeals etc. This timeframe does not relate to tenant searches. When you look at Class A office space there is little available. The Alan Brooks report noted a 3.1% vacancy of Class A with the larges being 7000 sq ft. If you want more than 7000sq ft you are out of luck. Speculating, Gallagher Flynn did this.

- M. Long thinks that the discussion was about whether this should be greater assurance whether this space will be used.
- D. G. White the ordinance today doesn't say you need to have a lease and the report from Alan Brooks shows that it is needed. Have very real tenants they are in discussion with, Don't have a lease and thinks that to set the precedence on needing a lease before, then it would be had
- J. Stevens tough question. Contrasting up the street, the Marriot had a dedicated use that needed it and had employees. Would like comments on that.
- D. G. White there are exceptions, that if a big office would like to build a regional hub over 5 years it would be feasible. Same for a supermarket etc would look to the 5 year plan. For offices they can be in other locations, they aren't looking at local market and need a place to be. If it is to be a specific user, it won't work. Ordinance doesn't say that and we are losing them to suburbia where the space is available. General need is there.
- P. Henninge in his mind, commercial space in Burlington, there isn't this size of space but a lot of smaller. What is the pool of this space, in downtown Burlington?
- D. G. White each floor is 14000 and could use the whole space if needed. Subsection G notes that whenever a height bonus is given there must be public amenities. Read details of G and ran down four. Public plaza in ROW installed and maintained by owners. Parking (not seeking a bonus for this), but proposing that spaces will be available to public nights and weekends. Widen sidewalk on King Street with DPW. Not sure if that will be approved by

- DPW. Undergrounding utilities in the area at their cost. All these meet public amenity requirements. Property in BST zone, to allow for greater heights downtown and transition with residential. Smaller uses nearby is a misimpression. Gave detail of other buildings in area and their heights. Within context of 4 story buildings in the area. There are three story buildings but need to be clear of bigger context.
- G. Goldsmith each time they have had comments and have tried to respond. There have been good suggestions. Showed photographs of scale from the water, provided to board. Discussed height. Fairly typical of scale in that part of town. Some comments made since last hearing have been developed. Discussed base of building and uniformity.
- M. Bellerjeau gave details on the detailing on the surfaces of the building.
- G. Goldsmith King St. Gave details of new plans based on comments. Have changed parking entry, new pedestrian entry, new detailing and balcony. Goes a long way to help King Street.
- M. Bellerjeau additional rooftop terrace will help have building to not have large 4th floor wall on that corner. Two opportunities for public parking to exit the building on King Street and along south side to Battery Street. Will allow less people walking through driveway.
- G. Goldsmith Come a long way. Special construction system to make the floor heights lower inside.
- B. Rabinowitz asked where mechanical is on plan.
- M. Bellerjeau showed area. 45-50 feet from all sides.
- B. Rabinowitz asked where grade would be on south side.
- M. Bellerjeau showed retaining wall location at garage.

Peter Potts - Chair of PC. Chairman during zoning rewrite. Does not support or appose. Would like to comment on job attraction bonus when it was considered when it was done in rewrite. Came from four councilors. Gave history. At no time did they require owner occupied. Did discuss bringing new or retaining. Commission wanted either case. To create link from construction and retention was more difficult. Did not differentiate to create new or relocation. Question of speculative construction was not considered.

Thea Lewis - Owns Queen City Ghost Walk. Last year did tour for Burlington's waterfront history. Buildings in the block are some of the most historic. Gave history. Interesting things about previous presentation that you need to talk about scale and history, Reason for the Icehouse was to be an icehouse. Seems that amenities are for tenants. Doesn't balance what they will see when they enter the city. Dwarfs Gideon King's house. Was preserved during bicentennial. Won't have such a great change as right now to preserve history. Does not fit in as tourists will not be looking for office, will be looking for character.

Rosemarie Conn - Pass corner several times a week. Needs to show originality of design. Important to be original in design. Need more than what there is now. Doesn't feel the building meets the goals and looks like an office park building. Doesn't see why interesting design should cost more and be problematic. Would like design to distinguish itself and the City.

Tibor Bernath - Need smaller and more attractive and need to look good for entering the City.

Jane Knodell - Former City Councilor. Legislative intent. At end of process they worked on downtown zoning, encompassing commercial areas of waterfront. Wanted to allow diversified area with space for jobs downtown. This bonus went about that. Did not differentiate speculative versus non. Did not look at specific lease in place. Need some analysis and case made and that the jobs would be produced would be provided due to the additional height. Looked for analysis of 'what if' the height wasn't granted. Also think data is needed. Evidence for Class A space is short. Would be appropriate use of bonus in this instance.

- P. Henninge asked about thoughts of using fourth floor as residential.
- J. Knodell it is not residential. Would be ok.

- M. Long asked about requiring details on adverse effect. How would smaller office relate to smaller use.
- J. Knodell given the cost of developing downtown it would meet that.

Debby Eely - Representing potential tenant. Have been looking for office space for a year. Need over 10000 sq ft. This building is intriguing for them. The existing building is an eyesore and this would be much better and better than an office park building. Very interested in. Not much out there and have worked with several realtors.

Samuel Murray - Tenant in Gideon King building. Door is 20 feet from proposed parking garage. Concerned with short term. 10 healing professionals in the building. Concerned how they could survive a year without soundproofing or requiring relocation. Work on healing stress and trauma. Might not be able to sustain for the year. Consultation would be good before construction. Developers have worked hard to meet concerns and his hope is to also be considered in construction phase.

Jared Wood – DPW Commissioner. Was previously on Design Review Board. Don't design for just Burlington but for Lake Champlain. Snow removal is going to happen. Doesn't know if this allows for enough greenbelt to allow snow piles. Minimum is 6 feet but 10 feet might not be enough. Amenities sounded like being built on City land. Doesn't support taxpayers giving space for amenities. Single occupancy of cars is high. Wasn't clear if they were using on street in their numbers. Infrastructure is marginal, what does added building do to demand? Not for or against, just points to deliberate.

Kurt Wright - City Councilor. Also did zoning rewrite. Is there a need? Yes. Alan Burke report shows this. Fourth floor is needed to make project work. Bonus is justified. Want commercial development and need is there. Will attract and retain jobs. Haven't had this for half a decade. Will clean up eyesore. Spoke to a lot of people, and they said that it is good. Spoke with Ferry and they feel that the current is an eyesore. Decision is vital to Burlington, cannot continue to see the flight to the suburbs. Will greatly improve entire area.

Joan Shannon - City Councilor. Had some people agree with her comments. Does it qualify for bonus? First time and so will become a precedent. To meet this bonus, they need to meet public benefit and balance the benefits of both. This is what was approved when made. Took time to review ordinance and notes they had not considered public. Spoke with D. G. White and discussed. DRB has discretion. No clear line and can be tested in a number of ways and this will set precedent. Public amenities, sidewalk improvement should not be sole. Maybe use of rooftop garden space can contribute. These are the things to have for public not just office space to use. Scale and massing is biggest issue for this part of town. Sees a lot of real improvement. King Street side is still a concern. Door added looks like a back door. Needs real entrance and front to the corner building. Is do-able. Hard to find time to look at drawings while P&Z is in the office. Not difficult to put online. Would like more public presentation. Details are lost because of costs. Need assurance that those details don't come out later and are essential to the permit. Surprised and disheartened that they are not operable windows.

Bruce Seifer – CEDO. Assistant Director. Have worked a number of years on this project while ordinance was re-written. Lucky to have them wait that time and create commercial tax base for the city. Keep inventory of vacant commercial space every month. These spaces aren't available and are in the suburbs out of town. Main Street landing building on waterfront, was last building and there is much more out of town. Building provided space for a national company to stay. Number of people wanting to increase space is big in Burlington,

Joan Shannon provided details from ordinance.

Marsha Mora - On south Champlain Street. Wants clarity on hazardous issues and wants to know someone is looking at this. 92 spots for parking is not enough. People still live there and there will be noise and parking. Doesn't want to park blocks away to access her home. It seems this area will not be residential in the future. Would love to hear more about the hazardous waste issue.

S. Gustin - The VT DEC is involved. And someone is here to testify on this.

Hugo Martinez Cazon from DEC. At property there were a number of underground storage tanks. These were removed. There was a review at the time they were closed. That was a closed issue. Also monitoring neighborhood from nearby site for PCE. State regulations are set for them to respond. This release is moving in groundwater and does cross some properties. There have been samples in year and half of soil and basements etc. Conducting study over time. Know three properties between Main and King Streets that are currently under depressurization system. Do not have data to verify if more properties need to be added to system. This project the building will install the same system which will push above the roofline. This makes it not go into the building. Voluntarily taking these measures.

- M. Long asked if any concerns on surrounding neighbors from construction or disturbance.
- H. Martinez Cazon if there is excavation into the soil, DEC are to be informed and will coordinate with builders during construction to properly manage soils. Ejection of vapor is not his division but it is deferred to them as it is not at a threshold that would require a pollution prevention device.
- M. Long is the DEC managing this issue.
- H. Martinez Cazon yes.
- D. G. White asked if this site specifically has been found to have contamination that would require them to do anything.
- H. Martinez Cazon yes they have data so far that shows this is voluntary. If they found that if it was mandatory it would be the same system that they are volunteering.
- D. G. White responded. Is 100% commercial. First floor may or may not have retail but are not applying for it. Maybe they could apply for change of use if needed. Set up. Retail difficult in this area. Would love that if they could have retail or restaurant. When they think of character hopes they are not looking at others and looking past detailing etc. Designed to have clear major front and having second lobby may be confusing and would not work. Construction noise will follow city ordinance. If there are further issues and will be happy to consult and see what can be done. Snow removal will be done like every other space they have and will haul away as they do. Parking meets requirements of zoning ordinance. Tenants want to know they have enough space, but there is also more space a block away that could be used for tenants. Water and sewer...building is intended to be LEED certified which controls this. Will be lower than standard calculation. Estimating 30-40 employees per floor. So loss of a floor could be 30-40 employees. Is not seeking to maximize the bonuses. Been designed suitably to meet context. Four floors works. Intent to build with all details as proposed. Public amenities provided do not need to be done on site but they are being provided and paid for. Will be treating some of city's stormwater system as a benefit to city. Another benefit not mentioned earlier, have made verbal offer to make it part of public park for part of the public park. At this point it is their choice and they want to offer is as part of this permit.
- B. Rabinowitz asked what color for windows and pre cast concrete.
- M. Bellerjeau can get cut sheets and pictures by next week.
- M. Long closed public hearing at 7.45.
- 4. 10-0925CA/MA; 617 Riverside Avenue (NMU, Ward 2) Community Health Center
 Demolish existing building and construct new building with two floors of health clinic and two floors of parking. (Project Manager, Scott Gustin)

Department of Planning and Zoning

149 Church Street Burlington, VT 05401 Telephone: (802) 865-7188 (802) 865-7195 (FAX) (802) 865-7142 (TTY) David White, AICP, Director Ken Lerner, Assistant Director Sandrine Thibault, AICP, Comprehensive Planner Jay Appleton, GIS Manager Scott Gustin, AICP, Senior Planner Mary O'Neil, Associate Planner Nic Anderson, Zoning Clerk Elsie Tillotson, Department Secretary



TO:

Development Review Board

FROM: DATE:

Scott Gustin July 6, 2010

RE:

10-0601CA/MA; 180-188 Battery Street

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: BST

Ward: 5

Owner/Applicant: Investors Corporation of Vermont

Request: Demolish two buildings and underground storage containers and construct new four story office building with parking

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 8 (Parking)

Background Information:

The applicant proposes to redevelop two existing parcels with the construction of a commercial office building bound by Battery and King Streets within the Battery Street Transition District (BST). The proposed structure is a 44' 8" high (utilizing bonus provisions), multi-story building with one level of subterranean parking and another level of parking at grade level. The building will feature mostly office space; however, two ground-level units along Battery Street may contain retail space.

The parking areas of this facility will utilize two (2) entries; a single entry will be from Battery Street and will service entry/exit to the subterranean level of parking. Another entry/exit will be from King Street and will service the open air parking level. This building will feature multiple grade level entries; however, the main entrance will face Battery Street. The streetscape will include utility lines placed underground, realignment of new concrete sidewalks, and installation of pervious "eco-pavers."

The proposed building has a useable square footage total of 44,967 gross square feet, plus a 92 vehicle parking structure. The existing vacant structures total 13,424 square feet.

The Design Advisory Board reviewed the proposal on February 9, 2010 and recommended approval subject to the following conditions:

1. An updated account of the results of the CAP (corrective action plan) and a determination regarding the subject site should be provided.

- 2. The stormwater and erosion control plans will have to be incorporated into an Erosion Prevention and Sediment Control Plan (EPSC) as required under Chapter 26 for a major impact development and must be reviewed by the Stormwater Administrator.
- 3. Outdoor lighting details (fixtures, locations, and illumination levels) are needed.
- 4. Details are needed for the new street trees, as is acceptance by the City Arborist.
- 5. Approval from the City is required for any plaza or seating area within the public ROW.
- 6. Details about the specific energy efficiency methods that are proposed to obtain LEED certification should be provided.
- 7. Exterior building materials need to be clarified. A materials palette would be very helpful.
- 8. Clarification as to the location of mechanicals.
- 9. Fire Marshal approval of emergency vehicle accessibility is needed.
- 10. A deeded easement or other instrument acceptable to the city attorney for the use of the parking spaces by the public must be provided in order for the development to obtain the proposed height bonus.

Revised plans and information have been submitted to reflect the DAB recommendations as noted in the findings below. Condition 10 is moot, as the applicant is no longer seeking a height bonus as related to public parking.

The Conservation Board reviewed the proposal on March 1, 2010 and supported the project subject to the standard stormwater and erosion control conditions for all major impact projects (per Chapter 26: Wastewater, Stormwater, & Pollution Control). The Board also advised the applicant to evaluate the underground PCE plume and recommended that the applicant provide an easement for city use, or convey to the city, the finger of land abutting the pocket park on South Champlain Street.

The applicant is amenable to these recommendations and has submitted a stormwater management and erosion control plan. It has now been reviewed and approved by the Stormwater Administrator. Information submitted since the DRB's May 18, 2010 review addresses the nearby PCE plume. The applicant will allow city use of the finger of land abutting the pocket park on South Champlain Street.

The Development Review Board reviewed this application on May 18, 2010 and identified a number of concerns. The Board tabled the application to allow the applicant additional time to address the following items:

- 1. What is being done to address the loss of 24 parking spaces currently being used by neighboring properties?
- 2. Does stormwater need to be pumped into city system or can gravity be used?
- 3. How will excavation affect the PCE plume? What is being done to address PCE in the finished building?
- 4. Strengthen the King St façade make it a second primary façade.
- 5. Address the job attraction/retention bonus.
- 6. Provide greater detail with respect to the interaction between pervious pavers/pavement and the PCE plume. Provide a barrier under the pervious pavers/pavement.
- 7. Provide clarity on the RH/BST zone boundary.
- 8. Provide VT DEC documentation re: the PCE plume and corrective action plan.
- 9. Provide noise information on garage vents and rooftop mechanicals.
- 10. Clarify on-street parking (what's newly proposed?).

Revised project plans and additional information has been submitted by the applicant to address the foregoing items as noted in these findings.

Previous zoning actions for this property are noted below.

- 3/26/04, Approval for parallel sign
- 3/26/04, Approval to install an awning
- 6/24/99, Approval to renew permit for an automobile repair/training facility
- 2/13/97, Approval for 9-space parking waiver associated with change in use to automobile repair/training facility
- 6/3/96, Approval to establish retail use
- 6/15/93, Approval to install parallel sign
- 3/15/93, Approval to establish retail use
- 7/30/91, Approval to install two parallel signs
- 10/20/88, Approval for parallel sign
- 10/14/88, Approval to replace existing door and stairs
- 10/26/87, Approval to install three parallel signs
- 3/5/85, Approval for parallel signs
- 1/31/85, Approval to install new front door and stairs
- 11/9/84, Approval to establish marine retail store
- 4/7/84, Approval for parallel sign
- 3/23/84, Approval to construct new doorway on King Street facade
- 12/23/83, Approval to convert portion of warehouse to retail use
- 8/14/75, Approval to install 4,000 gal. underground gasoline tank and associated pump

Recommendation: Major Impact and Certificate of appropriateness approval as per, and subject to, the following findings and conditions:

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Sec. 3.5.6, Review Criteria

- (a) Conditional Use Review Standards
- 1. The capacity of existing or planned community facilities:

The proposed building will be served by municipal water and sewer. Sufficient capacity is available and has been confirmed in writing from the Department of Public Works. A state wastewater permit will also be needed prior to construction. As noted in Sec. 5.5.3, a stormwater management system is proposed and will provide attenuation and treatment of stormwater prior to controlled discharge into the city system. (Affirmative finding)

2. The character of the area affected;

The subject property is located within the Battery Street Transition zone and is surrounded by a mix of commercial properties. Some residences are also present in the neighborhood. The scale of buildings in the area varies considerably. The proposed office structure would be one of the larger buildings in the immediate neighborhood; however, it remains within the established scale of buildings in the area as articulated under Sec. 6.3.2 of these findings. (Affirmative finding)

3. Traffic on roads and highways in the vicinity;

A brief traffic report has been provided. Anticipated peak hour trip ends (70) are below the threshold (75) requiring a full traffic analysis. Level of service at the King and Battery Street intersection is moderately affected by the proposed development with a decline from LOS B to C southbound on Battery Street. Traffic queues may block access into/out of the site on rare occasion. Public Works has reviewed the traffic report and requires that the traffic signal at the Battery Street/King Street intersection be modified to include pedestrian actuation. (Affirmative finding as conditioned)

4. Bylaws then in effect;

As per the findings herein and as conditioned, the project is in compliance with all applicable zoning bylaws. (Affirmative finding)

5. Utilization of renewable energy resources;

There is no indication that this development will utilize renewable energy resources. Given its ample southern and western exposure, it may be a good candidate for solar energy. In any event, the project will not adversely impact the potential use of alternative energy by neighboring properties. LEED certification will be pursued. (Affirmative finding)

6. Cumulative impacts of the proposed use;

The proposed development will bring additional office space and possibly retail space within close proximity to Burlington's downtown. Little in the way of cumulative impacts are anticipated with the proposed use. Additional traffic will be generated; however, impacts on the existing transportation network will be modest. Public Works will require that the existing traffic signal at the King Street and Battery Street intersection be modified to include pedestrian actuation. (Affirmative finding)

7. Functional family;

Not applicable.

8. Vehicular access points;

The building will be served by two vehicular access points, one on King Street and another on Battery Street. Given the configuration of this corner property and the proposed garage, these two access points are acceptable. (Affirmative finding)

9. Signs;

Outdoor signage is subject to a separate zoning permit.

10. Mitigation measures;

The proposed use will not generate noise or glare sufficient to warrant mitigation. The applicant has submitted sound level information pertaining to the proposed rooftop mechanical equipment and the garage vents. The rooftop cooling tower will have a dB rating of less than 30 (i.e. like a quite whisper) at street level. The garage vents will have a dB rating of 10 (i.e. less than rustling leaves). Lighting is addressed under Sec. 5.5.2. (Affirmative finding)

11. Time limits for construction;

The application indicates that construction will take 12 months. This duration is within the standard time frame afforded zoning permits. Construction hours will be governed by the city's noise ordinance. (Affirmative finding)

12. Hours of operation and construction;

Office and retail uses are permitted in the BST district and do not need to be limited by permit. As noted above, hours of construction need not be specified in this location and will be restricted by the city's noise ordinance. (Affirmative finding)

13. Future enlargement or alterations;

In the event of future enlargement or alteration, permits would be required and reviewed under the regulations then in effect. (Affirmative finding)

14. Performance standards;

Performance standards relating to outdoor lighting and erosion control are addressed under Article 5 of these findings.

15. Conditions and safeguards;

Approval of this project will be conditioned to implement the purposes of the zoning regulations. (Affirmative finding)

- (b) Major Impact Review Standards
- 1. Not result in undue water, air, or noise pollution;

Stormwater management will be substantially improved as part of this application. See Sec. 5.5.3 for details. Air and noise pollution will be as expected for a typical office or retail use. (Affirmative finding)

- 2. Have sufficient water available for its needs; See Sec. 3.5.6 (a) 1.
- 3. Not unreasonably burden the city's present or future water supply or distribution system; See Sec. 3.5.6 (a) 1.
- 4. Not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;

A comprehensive erosion prevention and sediment control plan has been submitted along with a stormwater management plan. The plans have been reviewed by the Conservation Board and the Stormwater Administrator per Chapter 26. The Stormwater Administrator has approved the measures with conditions to be incorporated into the DRB approval, if granted. (Affirmative finding if conditioned)

- 5. Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed; See Sec. 3.5.6 (a) 3 for traffic impacts. The proposed office and retail uses will not cause unreasonable congestion or unsafe conditions on nearby sidewalks or bikeways. (Affirmative finding)
- 6. Not cause an unreasonable burden on the city's ability to provide educational services;

The proposed commercial building will have no adverse impact on the city's ability to provide educational services. (Affirmative finding)

- 7. Not place an unreasonable burden on the city's ability to provide municipal services; The proposed development will generate additional impacts on city services such as water and sewer and possibly emergency services; however, those impacts are expected to be proportionately modest. Payment of impact fees will help offset impacts generated by the development. (Affirmative finding if conditioned)
- 8. Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city; See Sec. 6.2.2 (a) & 6.3.2 (b).
- 9. Not have an undue adverse effect on the city's present or future growth patterns nor on the city's fiscal ability to accommodate such growth, nor on the city's investment in public services and facilities;

The project constitutes redevelopment of an existing commercial site into an office, and possibly retail, building with associated structured parking. It will have no adverse impact on the city's present or future growth patterns. (Affirmative finding)

10. Be in substantial conformance with the city's municipal development plan; The proposed development can be found to be in substantial conformance with the MDP, as per the following:

The proposed development brings new office and retail space into the city's Downtown Improvement District, which is intended to attract and support a wide range of retail and office uses (pg. I-10, Downtown Improvement District).

The project includes a comprehensive stormwater management plan that collects and attenuates stormwater runoff prior to discharge into the city system. It also includes pervious hard surfaces that contribute to onsite stormwater management, rather than shedding runoff into the city streets (pg. II-5, Urban Ecosystems).

The building will strengthen the southeast corner of the Battery and King Street intersection and reinforce this gateway into the city (pg. III-5, Gateways).

The proposed development will contribute to the city's network of street trees and will also include the burying of utility lines (pg. III-9, Street Trees and Locating Utilities).

The new office building will contribute to Burlington's status as a regional growth center and will bring additional jobs into Burlington's downtown area (pg. VI-3, Regional Growth Center & pg. VI-5, Creating New Jobs).

The proposed building will comply with the city's current energy efficiency standards (Sec. VIII). (Affirmative finding)

11. Not have an undue adverse impact on the present or projected housing needs of the city in terms of amount, type, affordability and location;

The proposed commercial building will have no adverse impact on the present or projected housing needs of the city. (Affirmative finding)

12. Not have an undue adverse impact on the present or projected park and recreation needs of the city.

Minimal anticipated impacts on the city's park and recreation needs are anticipated. Payment of impact fees will help offset such impacts. (Affirmative finding as conditioned)

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts:

(a) Purpose

(5) Battery Street Transition District (BST)

The subject property is located in the BST zone, a transition area between the downtown waterfront and nearby residential areas. As noted previously, the proposed building is consistent with the existing scale of buildings in the area and will contain a permitted office use and possibly some permitted retail space. The zoning map depicts the eastern (King Street) parcel as RH (residential high density zoning); however, a zoning administrative interpretation dated March 19, 2010 states that this boundary is incorrectly drawn, and that, in fact, the parcel is within the BST zone. A memo from David E. White, Director of Planning & Zoning, has been submitted to provide detailed information on this matter. Essentially, the line on the December 2007 zoning map between the RH and BST zones was drawn incorrectly between the two properties included in this application. The two properties were included in the WFC-T zone (now BST zone) in the 1994 Zoning Ordinance and were intended to be in the BST zone in the December 2007 Comprehensive Development Ordinance (CDO). The two parcels are on a single deed and have been in joint ownership since at least 1975 and were therefore both included in the WFC-T zone under the 1994 Zoning Ordinance. When the zone boundary was drawn for the CDO along this stretch of Battery Street, it followed parcel lines of those properties fronting Battery Street only, without regard to parcels in joint ownership as should have been done. A correction to the zoning map is pending with the Planning Commission. (Affirmative finding)

(b) Dimensional Standards & Density

A FAR of 3 is allowed in the BST zone. The 0.627 acre property would allow an 81,594 sf building. The proposed development, including the commercial building and garage, is 78,196 sf and is acceptable.

There is no lot coverage limit in the BST zone. The proposed development will entail 85.1% lot coverage.

The proposed building will be set back more than the minimum required 12' from the curb on both King Street and Battery Street. No side or rear yard setbacks are required in the BST zone, except along the district boundary with a residential zone. In this case, the eastern property line of the King Street parcel is the boundary between the BST and RH zones. A 15' setback is required along this boundary. Since DAB review, the parking structure has been revised to comply with this required setback. A strip of landscaped green space now runs along the eastern property boundary.

The proposed building will be 44' 8" tall on average. The southern elevation is the tallest at 45'. This height is over the 35' maximum height in the BST zone but may be allowed by way of height

bonus in subsection (d) 6 below. Note that the building parapet exceeds the roof height but may be permissible as an architectural feature occupying less than 10% of the roof area. The rooftop cooler and elevator tower may be permitted under the same provision. (Affirmative finding)

(c) Permitted & Conditional Uses

Office and retail are permitted uses in the BST zone; however, as a major impact project, it is subject to conditional use review. Such review is included in this application. (Affirmative finding)

(d) District Specific Regulations

1. Use Restrictions

A. Ground Floor Residential Uses Restricted

No residential use is included in this proposal. (Affirmative finding)

B. Residential/Nonresidential Mix Required (Not applicable)

2. Public Trust Restrictions (Not applicable)

3. Facades and Setbacks on Side and Rear Property Lines

The neighboring building to the south is built to the property line shared with the subject development. It has windows facing the proposed development. As a result, a 10' setback is required for new buildings abutting the existing structure. Surface parking and a driveway into the lower parking deck will run along the southern property line and is acceptable. The garage structure will be placed well behind (east of) the neighboring building and, in turn, does not need to meet a 10' setback. (Affirmative finding)

4. Building Height Setbacks (Not applicable)

5. Lake Champlain Waterfront Setbacks (Not applicable)

6. Development Bonuses/Additional Allowances

The application seeks a height bonus under item D, *Job Attraction and Expansion Bonus*, of this criterion. This bonus is offered at 10' and 20' depending on the amount of commercial space proposed. In this case, the applicants propose 100% commercial space – mostly office with some possible retail space – and are therefore eligible for a 20' height bonus. The applicants are seeking a height bonus of just fewer than 10'.

In order to be approved for the height bonus under item D, the Development Review Board must find either that: 1) Such additional height allowance is necessary to accommodate the creation of additional jobs in Burlington which will not be created in the City without such allowance, or 2) Such additional height allowance is necessary to preserve existing employment in Burlington which will be lost to the City without such allowance.

Significant testimony at the May 18 DRB meeting centered on the requested height bonus and whether is it warranted. Most of the testimony centered on whether the proposed development would create new jobs or simply transfer them. As the bonus language is written, job creation in the City can be totally new jobs (as in expanding a business) or existing jobs from elsewhere that come into the City. The point is to bring additional employment into Burlington. The bonus language also refers to job retention – to keep existing jobs in Burlington. In order to qualify for the additional height under the *Jobs* bonus, the DRB must find affirmatively that either new jobs will be created or come into Burlington or that existing jobs will be retained. A memo from the Planning & Zoning Director has been submitted to elaborate on the intent of the *Job Attraction and Expansion Bonus* and qualifying for it.

Testimony at the May 18 hearing also questioned the need for additional office space in Burlington. The applicant has provided information gleaned from a June 2010 Allen & Brooks report to address the existing supply of, and need for, Class A office space downtown. While the overall office vacancy rate downtown is 8.3%, Class A office vacancy is just 3.1% with none of that space exceeding 10,000 sf. Companies needing larger office spaces looking to stay and expand in Burlington, or come to Burlington, have extremely limited options under current conditions. The proposed building would contain large Class A office units aimed at addressing this shortage.

The proposed commercial building is aimed at addressing an identified shortage in Burlington's downtown office market. At least two employers are looking to occupy and expand into the large office spaces to be provided. As a result, the project is eligible for the requested 10' height bonus. (Affirmative finding)

Article 5: Citywide General Regulations Sec. 5.2.3, Lot Coverage Requirements
See Sec. 4.4.1 (b) above.

Sec. 5.2.4, Buildable Area Calculation (Not applicable)

Sec. 5.2.5, Setbacks See Sec. 4.4.1 (b) above.

Sec. 5.2.6, Building Height Limits See Sec. 4.4.1 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations See Sec. 4.4.1 (b) above.

Sec. 5.4.8, Historic Buildings and Sites

(d) Demolition of Historic Buildings

1. Application for Demolition

All required materials have been submitted in application for the historic buildings. (Affirmative finding)

2. Standards for Review of Demolition

The historic buildings onsite have experienced significant deterioration; however, their condition is not the primary reason for demolition. The applicant has submitted a comprehensive historic analysis of the property and structures along with an economic feasibility study. In short, the buildings are not particularly significant and cannot be rehabilitated as part of a reasonably beneficial economic use of the property.

Redevelopment of the site is proposed in such a way as to relate well to the existing built environment in the area and minimizes impacts on remaining historic buildings. Redevelopment as proposed brings the property towards the use and intensity of development intended for this mixed use downtown district.

As required, the existing buildings have been properly documented.

The demolition is proposed in conjunction with redevelopment of the property with a new office building and associated site improvements. The property will not be left vacant. (Affirmative finding)

3. Deconstruction: Salvage and Reuse of Historic Building Materials
The applicant is encouraged to make materials from the historic buildings available to others for salvage. (Affirmative finding as conditioned)

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. (Affirmative finding)

Sec. 5.5.2, Outdoor Lighting

Outdoor lighting information has been revised; however, the fixtures in the specification sheets submitted in March 2010 do not appear to match those in the photometric plan done in April or as currently revised. In addition, the most recent photometric plan includes an additional new fixture (32 W prismatic) with no apparent cutsheet provided. Cutsheets for all proposed outdoor lighting fixtures are needed.

The proposed fixtures utilize acceptable LED, CFL, or metal halide bulbs. Whether the fixtures are cutoff or not cannot be determined until cutsheets for all fixture types are submitted. The revised photometric plan depicts illumination levels of 6.4 footcandles over the center Battery Street entrance. This level is somewhat over the 5.0 footcandle limit and needs to be lowered. Walkway illumination levels average 1.6 footcandles. While substantially lower than previously proposed, it exceeds the maximum average permissible of 0.5 footcandles with no one point exceeding 2.0 footcandles. The outdoor parking and circulation areas illumination levels are now compliant with the maximum illumination level of 4.0 footcandles at any one point. Outdoor lighting levels have generally improved; however, illumination levels for the walkways and main entrance still need to be revised downward. (Affirmative finding as conditioned)

Sec. 5.5.3, Stormwater and Erosion Control

A stormwater management plan has been provided and has been reviewed and approved by the Conservation Board and the Stormwater Administrator. Conditions stipulated by the Stormwater Administrator will be incorporated into this approval, if granted. Stormwater will be collected and directed into an underground tank. After settling, water will discharge from the tank into the city

system at a controlled rate. Due to the 0.2% slope of drainage from the lower garage level into the city's combined sewer system, a pump will be utilized rather than gravity. Pervious pavers will be installed in front of the main entrance on Battery Street. Geotextile fabric is optional based on soil conditions with the selected pavers. During its initial review of the project, the DRB questioned whether fabric should be installed to provide a barrier between the PCE plume and the pervious material. The applicant has responded that fabric is not needed in this case and won't be installed. PCE presence on the property is minimal and is below the regulatory threshold. Based on a cross section provided by the applicant, there is approximately 2.5' separation between the pavers on the surface and native soil underneath. Stormwater infiltrated through the pavers will be collected by way of underdrain and directed into the onsite stormwater system.

An erosion prevention and sediment control (EPSC) plan has been reviewed and approved by the Stormwater Administrator. (Affirmative finding as conditioned)

Article 6: Development Review Standards: Part 1, Land Division Design Standards Not applicable.

Part 2, Site Plan Design Standards Sec. 6.2.2, Review Standards

(a) Protection of important natural features

No trees or other significant vegetation will be removed as part of this proposal. There are no significant natural areas on the property. (Affirmative finding)

(b) Topographical alterations

The site slopes downward from east to west with a grade change of about 10 feet. Significant excavation is proposed for the building and associated parking structure; however, the end result at grade will be little different from existing conditions. (Affirmative finding)

(c) Protection of important public views

No public views of Lake Champlain and the Adirondack Mountains or of the Green Mountains are significantly affected by development. Views from private property are not considered under this criterion. (Affirmative finding)

(d) Protection of important cultural resources

There are no known pre-historic archaeological resources on the property. However, the subject property contains historic structures. A detailed analysis of these structures was prepared by the applicant's consultant. A review and comments on this report regarding these structures are addressed under Sec. 5.4.8. (Affirmative finding)

(e) Supporting the use of alternative energy

It is the intent of the developer to achieve LEED certification from the U.S. Green Building Council. The applicant has submitted an outline of items to be incorporated into the construction in pursuit of LEED certification. There is no indication that alternative energy will be utilized; however, the building will have ample solar exposure to the south and west. Natural light will reduce the need for artificial lighting inside the building. (Affirmative finding)

(f) Brownfield sites

The subject property is not included on the Vermont DEC's Hazardous Site List; however, given the historic uses of the site and other nearby properties with hazardous waste problems, a Phase I Environmental Site Assessment (ESA) was conducted for the site in 2003. Three underground storage tanks were removed or closed in place in 2002. No evidence of contamination was found in the vicinity of two of the tanks. Limited contamination was found in the vicinity of the third tank. The site was removed from the Hazardous Site List because of the low threat to receptors. The ESA concluded that there is "no evidence of recognized environmental conditions on site that warrant further investigation." Indoor air sampling at the nearby 151 South Champlain Street site indicates the presence of some contaminants exceeding EPA Risk Based Concentrations. The contaminants (i.e. the PCE plume) are related to the past use of the site for dry cleaning. A Corrective Action Plan (CAP) for nearby sites was developed. The subject property at 180 Battery Street was not included on this list. As requested by the DRB and its advisory boards, the applicant has provided information to address the PCE plume both during construction and post-construction.

During construction, soil and air analyses will be conducted to determine whether soils are contaminated and whether vapors are present. If contaminants are detected, protective actions will be taken according to applicable state and federal regulations. Although not required to do so, the applicants will construct the proposed building with an under-slab vapor barrier system that will serve to limit vapors traveling into the building. The under-slab system will ventilate any ground PCE (or other) vapors that may encroach into the site. The system will exhaust at least 10' above pedestrian walkways. Testimony from VT DEC officials will be provided at the July 6 DRB hearing. (Affirmative finding)

(g) Provide for nature's events

See Sec. 5.5.3 for stormwater management. Provision for snow storage has not been indicated; however, there is some room available in the green space to be provided along the eastern boundary. (Affirmative finding)

(h) Building location and orientation

The site is a corner lot fronting on south east corner of Battery and King Streets with existing buildings to the east (35 King St.) and south (196 Battery St.). The main entrance appropriately fronts on Battery St. and includes large glass windows that address the frontage. A pedestrian circulation plaza and seating area is located within the front entrance area on Battery Street. The south and east elevations are rear in nature and design. The north elevation faces King Street and has been significantly revised to serve as a second front façade. As recommended by this criterion, the proposed building is placed near the intersection and parallel to the street in order to help anchor the corner and to take advantage of the high visibility location. Sight lines at the intersection remain adequate as confirmed by the Department of Public Works engineering division. (Affirmative finding)

(i) Vehicular access

The proposed parking areas will be served by two vehicle access points. The lower level of the parking garage will provide spaces for 62 vehicles which will enter/exit from Battery Street and the upper level of parking will provide spaces for 30 vehicles which enter/exit from King Street. The sidewalks will be re-constructed and placed in-line with the existing sidewalk on both Battery and King Streets. (Affirmative finding)

(j) Pedestrian access

A pedestrian circulation plaza and seating area is located at the front entrance area on Battery Street. Pedestrian access into the proposed building will be provided via this main entry. Any portions of the plaza and benches in the public ROW will have to obtain appropriate approvals from Public Works, Parks & Recreation, and/or the City Council as may be required. Sidewalks are depicted crossing the garage entry driveways along both streets. (Affirmative finding)

(k) Accessibility for the handicapped

Several handicap parking spaces are depicted in the proposed garage in close proximity to the elevators. It is the applicant's responsibility to comply with all applicable ADA requirements. A handicap space is shown in the Battery Street ROW, but no accessible curb cut evident. In any event, the Department of Public Works has stipulated that no new onstreet parking be included in this project as noted in Sec. 8.1.8 below. (Affirmative finding as conditioned)

(1) Parking and circulation

As recommended by this criterion, parking will be placed to the side and rear of the structure. Much of it will be placed inside and under the building. Parking at the surface level is set back from the front line of the building as required along Battery and King Streets. Relatively little surface parking (9 compact spaces along Battery Street) is included in this proposal. Given sight constraints and the proximity of the neighboring building to the south, no shade trees are proposed for this surface parking area. Shade trees are recommended but not required. The adjacent building to the south will likely provide the recommended 30% shading for these surface parking spaces. If feasible, shade trees should be planted along the southern property line east of the adjacent building and west of the parking garage. Note that 6 Princeton elms to be planted along the eastern property line will provide shading of the adjacent surface level spaces in the parking garage; however, as these spaces are part of a structure, they are not included in the shading provision of this criterion. (Affirmative finding as conditioned)

(m) Landscaping and fences

Given the site's location in a downtown mixed use zone, relatively little green space is proposed. The 15' wide strip of green space along the eastern property line will be planted with new trees and shrubs. Other new landscaping will be concentrated around the building's main entrance. New street trees (red maples) are also proposed along Battery and King Streets. These street trees have been reviewed and approved by the City Arborist. No new fencing is proposed. (Affirmative finding)

(n) Public plazas and open space

As noted, a plaza with seating and plantings is proposed in front of the building along Battery Street. This plaza will have ample exposure to the sun. Shadow impacts on the proposed plaza are expected to be limited to the morning hours. (Affirmative finding)

(o) Outdoor lighting See Sec. 5.5.2.

(p) Integrate infrastructure into the design

Trash and recycling rooms are within the central core service area. Any new utility lines will be buried. A new transformer is proposed at the northeast corner of the proposed building. It will be screened with a series of new cedars. (Affirmative finding)

Part 3, Architectural Design Standards Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The size of the proposed building, particularly its height, was the subject of significant testimony at the May 18 DRB meeting. A number of individuals asserted that the proposed height of almost 45' was too tall as related to other neighborhood buildings. As noted in Sec. 4.4.1 (d) 6, a height bonus of about 10' is sought to allow the proposed height. When viewing existing buildings along Battery Street in this neighborhood, particularly along the eastern side, it quickly becomes evident that the buildings are in the 2-3 story range. The proposed building would be 1 story taller at 4 stories. This height does not overwhelm existing structures in the neighborhood, particularly when considering that neighboring buildings on either side of the proposed building are 3 stories tall. A sight line study has been submitted that depicts minimal visual impacts as viewed from the harbor. The building has been revised to incorporate additional articulation along the Battery Street and especially the King Street facades in order to offset its overall massing and scale. The top story along King Street has been pulled back at both the eastern end western ends of the structure as further mitigation of its height, massing, and scale.

Efforts have been made as depicted in the revised plans to lessen the appearance of the building's massing, height, and scale. The apparent mass and scale of the proposed building has been successfully broken into smaller parts by varying materials and planes along the façade and by providing distinct building elements such as the entryway plaza terraces. Height has been mitigated by top story setbacks along both King Street and Battery Street. The structure as proposed is consistent with the expected development in the BST district and relates well to the existing development pattern along this stretch of Battery Street and into lower Maple Street. (Affirmative finding)

2. Roofs and Rooflines

The proposed building will have a flat roof, which is common in the downtown. The roofline is varied by way of top story setbacks and parapets. (Affirmative finding)

3. Building Openings

The Battery Street façade has been revised to incorporate three recessed entries. Storefront windows provide visual access into the ground level interior of the building. A plaza provides visual and functional reinforcement to these entries. The King Street façade has been modified to include a new pedestrian entrance into the building and parking garage. An archway has been incorporated into the garage entrance and relates to the arched windows on new King Street and Battery Street building facades. Variations in fenestration throughout the building contribute to splitting the building into distinct sections – ground level, mid levels, and top level. (Affirmative finding)

(b) Protection of important architectural resources

The subject property contains historic structures. These structures will be demolished and replaced by the new office building. See Sec. 5.4.8 for details.

(c) Protection of important public views

See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The proposed building successfully provides an active and inviting street edge along Battery Street. Per this criterion, it integrates a mix of architectural features and materials with a plaza entry along the ground level. Fairly extensive glass along the ground level provides visual access into the interior of the building. This ground level glass will not be tinted, frosted, or mirrored. As noted previously, the two ground level commercial units along Battery Street are designated for office or retail use. Retail is encouraged and would add to the street-level attraction of the proposed building.

The other street elevation, King Street, has been revised to include a new entry into the building as noted above. It has also received greater architectural articulation and detail in the way of additional arched windows and garage entrance, a recessed top story and terrace, and ornamental brick work. Storefront glass continues to wrap around the King Street façade at its western end. (Affirmative finding as conditioned)

(e) Quality of materials

The patterns of off-white and red brick have been modified; however, the materials palate remains unchanged. The building will be clad in sections of red and off-white brick. Stone veneer will be used on the foundation. Spandrel glass will be installed along the top floor. A precast concrete cornice will be installed along the top of the 1st story. Bronze frame windows will be installed. These materials are of high quality and will extend the life expectancy of the proposed building. (Affirmative finding)

(f) Reduce energy utilization

Abundant windows will allow ample sunlight into the building interior. The applicant is seeking LEED certification for the building and will incorporate various energy efficiencies into the construction. The building must comply with the city's current energy efficiency requirements. (Affirmative finding as conditioned)

(g) Make advertising features complimentary to the site

A sign plan or tenant signs are expected. The western building elevation includes a sign band. While individual signs would require separate zoning permits the ground level concept for signs appears acceptable. Note that the King Street garage entry now includes a proposed "Parking Garage" sign. (Affirmative finding)

(h) Integrate infrastructure into the building design

Most mechanical equipment will be located inside the building. A rooftop cooling tower and energy recovery ventilator are depicted on the elevation drawings and will be screened with mesh enclosures. (Affirmative finding)

(i) Make spaces safe and secure

The building entrance is clearly visible. The building appears readily accessible by emergency vehicles along the both the north (through the parking area) and along Battery Street. Fire Marshal approval of the building's accessibility by emergency service vehicles has been obtained. (Affirmative finding)

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the Downtown parking district. The 45,000 sf building requires 90 parking spaces (i.e. 2 spaces per 1,000 sf of office space). The proposed parking garage will contain 92 spaces. Of the 92 total parking spaces, 12 (13%) are compact spaces. Compact spaces may account for up to 15% of total parking per Sec. 8.1.12, (h) Compact Car Parking.

Testimony has been provided asserting that some of the existing parking spaces are dedicated to neighboring properties. The applicant has responded that none of the existing parking spaces are subject to a long term lease, and none are required by way of permit. A search of the zoning files of neighboring properties supports this assertion. The applicants will continue to offer parking to individuals who wish to park in their parking garage at Main and College Streets.

Insofar as onstreet parking is concerned, the project plans depict several new onstreet spaces in front of the building along Battery Street and King Street. The DRB requested clarification as to the number and configuration of new onstreet parking. Since the May 18 DRB meeting, the applicant has consulted with the Department of Public Works on a variety of onstreet parking scenarios. Ultimately, DPW directed the applicants <u>not</u> to provide onstreet parking as part of the development. Onstreet parking may be implemented post-construction by way of DPW's standard procedures. All references to onstreet parking must be removed from the project plans. (Affirmative finding as conditioned)

Sec. 8.1.10, Off-Street Loading Requirements (Not applicable)

Sec. 8.1.11, Parking Dimensional Requirements

All full size parking spaces are 9' X 20' as required, and compact spaces are 8' X 18' (or 20'). Back-up space of 20' length is provided throughout, whereas 24' is the standard distance. The length of back-up space may be reduced by the DRB due to site topography, location of existing or proposed structures, etc. per this criterion. In this case, the constraints of the lot and the required 15' setback along the eastern property boundary necessitate the shorter back up length. The 20' length does allow sufficient room for 2-way circulation. (Affirmative finding)

Sec. 8.1.12, Limitations, Location, Use of Facilities (a) Off-Site Parking Facilities (Not applicable)

(b) Downtown Street Level Setback

As required by this criterion, grade-level parking is setback from the front property lines along both King Street and Battery Street. (Affirmative finding)

- (c) Front Yard Parking Restricted (Not applicable)
- (d) Shared Parking in Neighborhood Parking Districts (Not applicable)
- (e) Single Story Structures in Shared Use Districts

(Not applicable)

(f) Joint Use of Facilities (Not applicable)

(g) Availability of Facilities

The parking to be constructed as part of this development will be for the exclusive use of employees and customers. It will not be used for the storage or display of vehicles or materials. (Affirmative finding)

(h) Compact Car Parking See Sec. 8.1.8.

Sec. 8.1.13, Parking for Disabled Persons

A number of handicap parking spaces are proposed and comply with the minimum dimensional requirements and location next to access isles of 5' width. These spaces shall be marked and signed as required for handicap spaces. (Affirmative finding as conditioned)

Sec. 8.1.14, Stacked and Tandem Parking Restrictions (Not applicable)

Sec. 8.1.15, Waivers from Parking Requirements/Parking Management Plans (Not applicable)

Sec. 8.2.5, Bicycle Parking Requirements

The proposed building requires 11 long term bicycle parking spaces and 5 short term bicycle parking spaces. The garage floor plan depicts a locker room for 10 bicycles for long term bike parking. One additional long term space is needed. The first floor plan depicts a bike rack under cover with room for 10 bikes. (Affirmative finding as conditioned)

II. Conditions of Approval

- 1. **Prior to release of the zoning permit**, a revised lighting plan shall be submitted subject to staff review and approval. Illumination levels for the walkways and main entrance shall be revised downward to a level of compliance with Sec. 5.5.2.
- 2. **Prior to release of the zoning permit,** revised plans shall be submitted that remove all references to new onstreet parking, subject to staff review and approval.
- 3. **Prior to release of the zoning permit,** a revised long term bike parking area shall be submitted that depicts spaces for 11 bikes, subject to staff review and approval.
- 4. **Prior to release of the zoning permit**, a letter of credit or escrow agreement shall be executed with the City of Burlington for all construction site stormwater management and erosion control measures. The agreement shall be in an amount sufficient to cover the complete cost of administration and construction associated with remedying a problem associated with construction site stormwater management or erosion control. The standard forms for the letter of credit or escrow agreement are available at the Planning & Zoning Department.
- 5. At least 7 days prior to the issuance of a certificate of occupancy, the applicant shall pay to the Treasurer's Office the impact fee as calculated by staff based on the net new square footage of the proposed development.

- 6. **Prior to issuance of a certificate of occupancy**, the project engineer must certify in writing that, among other things, the project EPSC plan as approved by the Department of Public Works has been complied with and final site stabilization has occurred. This certification shall be filed with the Department of Planning & Zoning.
- 7. **Prior to issuance of a certificate of occupancy,** the traffic signal at the intersection of King Street and Battery Street shall be modified to include pedestrian actuation, subject to review and approval by the Department of Public Works.
- 8. **Prior to issuance of a certificate of occupancy**, the applicant shall execute an agreement with the Department of Parks & Recreation allowing City use of the southeast "finger" of land abutting the City's pocket park on South Champlain Street.
- 9. This project is subject to all standards contained in Chapter 26 pertaining to "major impact" projects. Specific conditions relating to Sec. 5.5.3 of the CDO and Chapter 26 are:
 - a) Erosion Prevention and Sediment Control Plan Condition: At all times after the initiation of land disturbance, this project must comply with the attached Chapter 26: Erosion Prevention and Sediment Control conditions of approval, dated 5/18/2010. Verification of compliance with these conditions must be obtained from the DPW Stormwater Program prior to the issuance of a Final Certificate of Occupancy.
 - b) Stormwater Management Condition: This project and property must comply with the attached Chapter 26: Stormwater Management Plan conditions of approval, dated 5/18/2010, including any on-going requirements for post-construction. Verification of compliance with the conditions must be obtained from the DPW Stormwater Program prior to the issuance of a Final Certificate of Occupancy.
 - c) Stormwater Management Maintenance Agreement: Prior to construction, the applicant must enter into an agreement with and receive approval from DPW regarding the installation, long term maintenance and any liability issues related to the installation of pervious pavers within the City Right of Way. See the Post Construction Stormwater Management
 - d) This approval incorporates the Post Construction Stormwater Management Plan Acceptance dated 5/18/10 and the Erosion Prevention & Sediment Control Plan Acceptance also dated 5/18/10.
- 10. A State of Vermont wastewater permit is required.
- 11. The applicant is encouraged to make materials from the historic buildings available to others for salvage.
- 12. The applicant is encouraged to plant shade trees along the southern property line east of the adjacent building and west of the parking garage to shade 30% of the abutting surface parking area.
- 13. Retail use is encouraged in the street level Battery Street commercial units.
- 14. All new utility lines shall be buried.
- 15. The proposed structure shall comply with Burlington's current energy efficiency standards and with Burlington's current ingress and egress requirements as established by Burlington Electric Department and Burlington Public Works, respectively.
- 16. It is the applicant's responsibility to comply with all applicable ADA requirements. Handicap parking spaces shall be marked and signed as required.
- 17. This property is subject to all applicable nuisance regulations and performance standards in the Burlington Code of Ordinances.
- 18. Standard permit conditions 1 -18.

Burlington Development Review Board

149 Church Street, City Hall Burlington, VT 05401

www.ci.burlington.vt.us/planning/drb/

Telephone: (802) 865-7188

(802) 865-7195 (FAX) (802) 865-7142 (TTY) Austin Hart Glenn Jarrett Eleanor Briggs Kenworthy Michael Long Kevin Worden Jonathan Stevens Brad Rabinowitz Paul Henninge (Alt.) Bob Schwartz (Alt.)



BURLINGTON DEVELOPMENT REVIEW BOARD
Tuesday, May 18, 2010 - 5:00 p.m.,
Contois Auditorium

City Hall, 149 Church Street, Burlington, VT MINUTES

Present: Austin Hart (Chair), Glenn Jarrett, Michael Long, Brad Rabinowitz, Kevin Worden, Jonathan

Stevens, Bob Schwartz (Alt.), Paul Henninge (Alt.) Staff: Ken Lerner, Mary O'Neil, Nic Anderson

Absent: Ellie Kenworthy

I. Agenda

Moved the Consent item to be heard with the second public hearing item.

II. Communications

6 items. Received and accepted by the Board.

III. Minutes

None.

IV. Consent

1. 10-0748SD; 1189-1193 North Avenue (NAC, Ward 4) Eric Farrell

Two lot subdivision. No development included. (Project Manager, Scott Gustin)

A. Hart will hear it with the public hearing item.

A. Hart only dealing with 2 lot subdivision on this item. Asked applicant if he has seen staff conditions and comments?

M. Long moved to approve and adopt staff findings and conditions of approval

Second: P. Henninge

Vote: For 7-0-1 against (Glenn Abstained); Motion passed. 7.14pm

V. Public Hearing

CL.,

1. 10-0601CA/MA; 180-188 Battery Street (BST, Ward 5) ICV Construction, Inc.

Demolish existing buildings and construct new four story office building with parking structure.

(Project Manager, Scott Gustin)

A. Hart and G. Jarrett recused.

Applicants present. Graham Goldsmith (Architect), B. Surprenant, Skip Williams, Michelle Bellijudge, Mike Roylier?.

- G. Goldsmith, reviewed project and then address conditions from DAB and conditions suggested by staff. Gave summary of the project. Met with neighbor to east regarding views and reduced mass and scale as seen from Battery St. Neighbor to south was impacted by parking. Moved to the east. Largest footprint is 15,750 sq ft. Positives in project are storm water management plan, lower level strengthening gateway to city, putting utility lines underground, new jobs, comply with energy efficiency standards, will seek LEED certification, been through TRC and CB who were happy.
- B. Surprenant addressed 10 issues from DAB.
- 1. Questions on PCE plume. Knew of previous contaminants. Have own scientist. Read letter from Martha Roy.

- 2. EPSC requirements. Firm has provided plan. Copy of M. Moir's acceptance provided.
- 3. Lighting. Meet the code related levels. Submitted specs for lighting since DAB. LED's eliminate light spill from garage. Accent and path lights. Wall mounted lights on lower level.
- 4. Trees discussed with Warren Spinner and has approved. P. Henninge asked if they go behind building; reply is yes.
- 5. Front. Doing something unique. Applying pervious pavers. Have an agreement with DPW on maintenance. Will shed water into onsite system. Will go into formal agreement if application is approved. Will have bike rack at entrance. K. Worden asked if parking off Battery St. is pervious. B. Surprenant: no; large section would not work. Changed when pushed parking entry around. K. Worden asked if lined system for pavers. Andrew Mills, not planned to be lined but can be. Just infiltration. Plume does not go to that location and is quite deep.
- 6. Energy efficiency. Details provided. Seeking LEED certification but not LEED bonus as per Ordinance. Have list in packet.
- 7. Samples of materials presented. Gave details of the materials on the plans. Stone is cultured. Color of concrete is off white.
- 8. Mechanicals shown in two locations on roof plan. Elevator penthouse, cooling tower and HRV. P. Henninge asked what total height; response 5.4 ft. above roof, ERV is 11 ft and 5.7 for tower. M. Long asked if these are beyond the 45 feet. Response: yes.
- 9. Fire Marshall approved; Email submitted.
- 10. Public parking. Only needed if seeking height bonus which not seeking. Just seeking jobs creation bonus.

B. Surprenant addressed Staff comments:

- 1. OK on traffic impacts.
- 2. City engineer has reviewed and approved
- 3. Street trees revised and approved by City Arborist
- 4. LEED Certification no longer.
- 5. Roof plan discussed above. Screening, BED transformer on NE corner, have fencing. Will do what BED requires.
- 6. Parking question. Off site uses parking on site. Will carry through the current leases. Will move to 30 Main Street during construction. Not designed for public parking. 30 Main is 765 feet away. Has public parking. Average 80-83 % full. This can take additional parking. Have agreement with neighbors to try and allow when and how they can. Reduced from 106 to 92 to meet setback requirements. Explained in letter to Scott. P. Henninge asked if historic parking is on King. B. Surprenant, yes. M. Long asked if 24 were leasing or public. Barb Supernaut have lease for one for 3 parks, the rest will be as possible. Don't have problems with parking. Always been accommodating. Tenants first and then others second.
- B. Rabinowitz asked about PCE mediation. Same as for radon? Will there be ongoing monitoring? B. Surprenant– yes, ongoing monitoring.
- M. Long asked if it is known what the source was.
- B. Surprenant believed it is from 151 South Champlain St from chemicals from dry-cleaning. Trying to solve instead of asking why.
- B. Rabinowitz Patterning on ground floor does not continue rhythm of other floors. Could be adjusted to have centre portion have same and side parts.
- K. Worden asked about slopes on ramp. Slopes on east corner look unresolved. Appears garage rainwater is to drain to on-site system which will pump to municipal system. Hate to see pumping stormwater. Garage is at elevation 110 and street is 105. Why pumping?
- Response is that pumping out from below; All dependant on cover and pervious. Combined sewer concerned about backup.
- K. Worden so you can look at possibility of gravity drained? Response; Yes.

K. Worden asked if garage is mechanically ventilated. Response yes louvers on street and can create openings in lower level garage.

Brad Rabinowitz asked what finish is on mechanical. Exposed or screened. Response: could be screened. Nothing planned. Will consider whatever is suggested by Board.

M. Long asked about neighbors and mass reduction that was done. Response: initial design had wider façade which was backed up so that it had a view shaft between. Also appeared neighbors concerns of structure looming over. M. Long asked of the footprint difference. Response: essentially the same square footage.

Brad Rabinowitz asked about zoning boundary resolution.

S. Gustin provided administrative determination from D. White. .

Joan Shannon – Ward 5 City Councilor. Sworn in. Wants to speak on intent of district. Thinks it misleading to include the adjacent parcel. Were shown a map that was approved and that is not in. Would not assume this is an error that needs addressing when it is a change. I consider this a change. In Burlington, there are no signs for parking and no entrances. If parking in other locations maybe they are hard to find. Concerned about real availability of parking. Not bad location for public parking. If not going to be real parking, then don't do it. Reason for bonuses is because the community is getting something in exchange. Do not see something really wonderful. Represent Ward 5. This neighborhood is mostly 2 story and more three stories on Battery, not much above this. Why would we give a bonus for brick boxes? Massing is a concern. Massing pattern interrupted. Possible to break up. Job attraction bonus was for bringing specific businesses to Burlington, not to accommodate a generic office space. Not attracting jobs. Wouldn't give bonuses for something that is not 'wonderful'. Need something to feel welcoming.

Eric Carlson View from his building is blocked. Is opposed to this. Looked over municipal development plan and this is to be done for design. Read aspects of MDP first chapter. Not moderately scaled. Half a million square feet of vacant space in Burlington, do we need to give a bonus for more of this? . This building does not strengthen the neighborhood. Been through zoning ordinance. 35 feet is city standard. Asking for two height bonuses, one each for parking and job creation.

S. Gustin clarified only one height bonus. No public parking now.

Eric Carlson how will this bring jobs into the city? If they have evidence of a lease, yes then they meet jobs bonus. Just by building office building is a stretch. Do they think this is bringing jobs in the city or will it just pull people from other spaces. Will that really bring in jobs? I don't think so.

A. Hart spoke as citizen and partner in Stone Store Holdings. They generally support the project. Good design in general. Couple of concerns. First is height. Doesn't know that this is much higher than general buildings, not that much. If giving a bonus for height, the city should be getting something back in return. In looking at staff comments and application couldn't see how this building meets criteria for job creation. Any building could possibly meet this. Would like to see what is so wonderful. Stone Store also affected by PCE plume. Applicant talked about this onsite but question is, with excavation, what is the effect of this on whatever is on the ground. Doesn't know if plume is stable, and would like to find out. M. Long asked if concern is about during construction.

A. Hart yes, they cannot do excavation without approval from the State. They are a block away from the lake so is concern. Design is good. Great section of town. Truly is gateway. Does think that it is appropriate to make sure this is a great building that the city can be proud of. Parking is minor issue, Would be concerned if parking waiver asked for. Street parking is at a premium. Their ZP required retail to create vitality. In order for that to survive, need convenient parking. Because of building setup, no street space has ever been available. Would this set up new parking on street? If that could be opened up, that would be good.

Chapin Spencer – Local Motion. Pedestrian improvements are desperately needed. No bumpouts. Would like covered bike parking. Outside rack is not sufficient. Shared parking is essential. Would like to see shared for Saturday and Sundays.

Seth Bowden GBIC – Represents valuable investment in downtown. Offers thoughtful gateway. Vital commercial image that Burlington wants and carefully planned for. Benefits for both workers and services around. Likes environmental design. Increases density. Doesn't know about bonuses but does help city and shouldn't be overlooked.

Rob Favali – 62 Maple Street. Great thing. Happy ICV is stepping up and doing it. Building is a good thing as entering the city from the waterfront is currently bad, what is proposed is better but not great. Visibility of this building is extremely high. Serious error to allow it so tall. Building has a height of 45 feet and stretching to 50 feet plus. What about noise from towers on east? Parking lot has exhaust which could be noisy. When it operates the neighbors will have issues. Westlake works because neighbors are hotels. Lake St works. Seventh Generation moved from KSV to Lake St. They didn't gain anything, they just moved. Building needs to be built. Encourage to deny the height. Need new architect and vision. Encourage to consider LEED certification. Asked if condos on upper floor? Doesn't want to see a tall building. Challenge the architecture and height. The DRB is there to ensure new development doesn't challenge the neighborhood. Encourage to reconsider. Project height doesn't work. Got noise possibilities from equipment.

Phil Meer: August First, Generally in favor of project as area needs work. Not a problem with height, and wants density. Biggest concern is parking. Bringing in more offices, its going to get worse. Is there a process that allows them to get more parking it would be great. Don't know how it's determined. What we don't need is more cars trying to park. Has employees that currently struggle. Parking is big issue.

Alan Hunt. Live at 93 Maple. Owns two buildings and been resident for 25 years. Was head of housing finance agency. Marshaled a lot of resources in that area to restore many buildings. A lot of private investment. Not aware of any new buildings since he has lived there. If we are going to start building new buildings we need to be selective on compatibility, height and texture. Unique neighborhood and had special stock of buildings. Not a specialist but doesn't think it meets that special criteria, especially the height, doesn't think it fits in with the neighborhood.

Marsha Morrel. Lives in neighborhood. Parking already a huge issue in the neighborhood. Many times she has had to park half way up King St. Cannot park during the day. Its bad. Don't have permit parking. Can't afford any more. If you live there you should be able to park. More people living there now. Need some consideration. Haven't heard enough about quality of life issues. 23 spots per floor, does this compute as an adequate amount? This auditorium is 2500 sq ft and this spot would need 5 if you ran numbers. Its not enough. Is it customary for applicant to submit science, or is there an unbiased source? Confused on February report about underground storage tanks. Are they there and need excavation, and what is in them?

Jim Lockridge – Lives at 56 King St. Architect described how they have addressed design pressures, but there has been no critique of this. All the things they have done for scale, texture is from the one façade, did not apply those changes to King Street façade. Will travel by brick wall. Their job is to make money, their job is not to make the neighborhood a better neighborhood. King Street façade looks like they are not interested in this aspect. Also wants it to be no taller than it should be.

Applicant response. B. Surprenant – agrees with comments on bringing offices to Burlington. Will have parties which could occupy the whole space. Has a company in South Burlington that is keen to move back. ICV has a good sense of what is needed. Current downtown vacancy is 3-5%. Don't make buildings solely to make money. It is a byproduct. Shortage of anything that is 8-10 thousand square feet and there have been companies in the last year who have had to move. Not asking for parking bonus. Have a parking garage already which is never full. Can possibly meet needs in another garage if needed. Have intended to have shared use parking on evenings and weekend on a fee basis. Not seeking bonus but will provide parking for public. Looked seriously at this site since 2003 with the height. Don't think its too tall. Its not likely that we can build a 3 story building. Happy to sit down and discuss on how we can change architecture to improve it.

Architect - trying to come up with simple and sensitive design. Tried to keep simple shape, not the wow factor. The detailing in the brick, stone, pilasters, parapets make it a good project. We are open to changes to the exterior. Tried to listen to staff and consultants about the architecture and responded in positive way. Seen buildings with wow factor but then three years later they are not ok. Open to ideas. Hard to understand on 2 dimensional drawings, but have tried to step the building back 10 feet at top to make it feel like three story. Has fourth floor on King St where it is 7 feet higher up in elevation. Rooftop helps to feel space and reduce mass and scale.

Brad Rabinowitz: The King St façade is one continuous wall. No similar effort on King St as with Battery. Façade looks like it wasn't paid attention to. Garage entry doesn't line up with detailing. There are buildings that are simple and plain on Battery but the massing shows that it is a big square when you look at the roof plan.

- J. Stevens noted the constant criticism they hear for height bonuses for other buildings. Doesn't think that what they have proposed for the jobs bonuses meets the ordinance.
- K. Worden overall appreciates what they are trying to do. Thinks that the overall responses are not enough. Would like to see more detail. Would like to see site plan updated before can do final deliberation. Very symmetrical building, colors sort of blend and could be one large box on both Battery and King Streets. Haven't heard much on anticipated uses and need more detail. Parking plan needs to be in any presentation. Would like to have very clear plan showing allocation. Zoning line, needs to be understood, as a critical item. Regarding contamination and excavation, would like state overview of documentation.
- B. Surprenant Re: copy of state of VT corrective action plan. The project is on the periphery of the PCE plume.
- K. Worden, yes, if it says there is no concerns that is good.
- B. Surprenant can have environmental consultant write it up.
- K. Worden noted letter from BWBC which mirrors Chapin Spencer's comments. Have agreement with DPW on signal. Asked if submitted DBA's for mechanicals?
- B. Surprenant we can provide.
- K. Worden asked about staff comments and on street parking.
- P. Henninge, there are a lot of curb cuts around and would like to see more public parking. Tall building can be nice thing in this location and sometimes nice scenes are the juxtaposition of small and tall. If they have details from outside company that may come in then that can meet the jobs creation. Tall buildings double edge sword for pedestrians. Would like something more special with King St sidewalk. Architect: has increased 3ft greenbelt to 5ft for better buffer for tree which do not exist at the moment and has been reviewed by warren spinner.
- S. Gustin the next available hearing time could be July 20.
- M. Long yes, hearing recessed to July 20.

11. 10-0749CA/MA; 1189-1193 North Avenue (NAC, Ward 4) Eric Farrell

Demolish 22,000sq ft of existing DMV building and construct 24 residential units. (Project Manager, Scott Gustin)

Applicant and public sworn in. E. Farrell gave narrative of proposal. Flipped 24 unit apartment building from sketch plan to interact better with the family housing with the main entrance on the north end. Made effort to relate all three buildings together with entrances. Been to CB and DPW have looked at plans. Bio retention area between parking areas. Changed plans to create better pedestrian nodes. Pergola and benches at front. Want to replace and enlarge bus stop subject to CCTA. Detailed lighting. Want to have LED street lights ideally but need to discuss with the developers of the adjacent projects. Outdoor recreation areas shared.

Brad Rabinowitz asked if pedestrian areas on asphalt will be other than painted. Will it be paved in any way?

E. Farrell could consider stamped crossings. Don't have any runs of aggregate sidewalk. Could do something at crossings. Showed sign designs that could be used. Want to be the same so that it looks like one cohesive lot. Boiler system in basement of Thayer school. One will be kept. AC to be kept on roof. Other ugly green AC units will be removed. Maybe 6 small HVAC units for rest of building. Each unit in apartments will have wall mounted unit and each

Department of Planning and Zoning

149 Church Street Burlington, VT 05401 Telephone: (802) 865-7188 (802) 865-7195 (FAX) (802) 865-7142 (TTY) David White, AICP, Director Ken Lerner, Assistant Director Sandrine Thibault, AICP, Comprehensive Planner Jay Appleton, GIS Manager Scott Gustin, AICP, Senior Planner Mary O'Neil, Associate Planner Nic Anderson, Zoning Clerk Elsie Tillotson, Department Secretary



TO:

Development Review Board

FROM:

Scott Gustin

DATE:

May 18, 2010

RE:

10-0601CA/MA; 180-188 Battery Street

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: BST

Ward: 5

Owner/Applicant: Investors Corporation of Vermont

Request: Demolish two buildings and underground storage containers and construct new four story office building with parking

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 8 (Parking)

Background Information:

The applicant proposes to redevelop two existing parcels with the construction of a commercial office building bound by Battery and King Streets within the Battery Street Transition District (BST). The proposed structure is a 44' 6" high (utilizing bonus provisions), multi-story building with one level of subterranean parking and another level of parking at grade level. The building will feature commercial office space on all floors.

The parking areas of this facility will utilize two (2) entries; a single entry will be from Battery Street and will service entry/exit to the subterranean level of parking. Another entry/exit will be from King Street and will service the open air parking level. This building will feature multiple grade level entries; however, the main entrance will face Battery Street. The streetscape will include utility lines placed underground, realignment of new concrete sidewalks, and installation of pervious "eco-pavers."

The proposed building has a useable square footage total of 44,967 gross square feet, plus a 92 vehicle parking structure. The existing vacant structures total 13,424 square feet.

The Design Advisory Board reviewed the proposal on February 9, 2010 and recommended approval subject to the following conditions:

1. An updated account of the results of the CAP (corrective action plan) and a determination regarding the subject site should be provided.

- 2. The stormwater and erosion control plans will have to be incorporated into an Erosion Prevention and Sediment Control Plan (EPSC) as required under Chapter 26 for a major impact development and must be reviewed by the Stormwater Administrator.
- 3. Outdoor lighting details (fixtures, locations, and illumination levels) are needed.
- 4. Details are needed for the new street trees, as is acceptance by the City Arborist.
- 5. Approval from the City is required for any plaza or seating area within the public ROW.
- 6. Details about the specific energy efficiency methods that are proposed to obtain LEED certification should be provided.
- 7. Exterior building materials need to be clarified. A materials palette would be very helpful.
- 8. Clarification as to the location of mechanicals.
- 9. Fire Marshall approval of emergency vehicle accessibility is needed.
- 10. A deeded easement or other instrument acceptable to the city attorney for the use of the parking spaces by the public must be provided in order for the development to obtain the proposed height bonus.

Revised plans and information have been submitted to reflect most of the DAB recommendations as noted in the findings below. Condition 10 is moot, as the applicant is no longer seeking a height bonus as related to public parking.

The Conservation Board reviewed the proposal on March 1, 2010 and supported the project subject to the standard stormwater and erosion control conditions for all major impact projects (per Chapter 26: Wastewater, Stormwater, & Pollution Control). The Board also advised the applicant to evaluate the underground PCE plume and recommended that the applicant provide an easement for city use, or convey to the city, the finger of land abutting the pocket park on South Champlain Street.

The applicant is amenable to these recommendations and has submitted a stormwater management and erosion control plan. No information has yet been submitted to indicate that the PCE plume has been addressed. The applicant will allow city use of the finger of land abutting the pocket park on South Champlain Street.

Previous zoning actions for this property are noted below.

- 3/26/04, Approval for parallel sign
- 3/26/04, Approval to install an awning
- 6/24/99, Approval to renew permit for an automobile repair/training facility
- 2/13/97, Approval for 9-space parking waiver associated with change in use to automobile repair/training facility
- 6/3/96, Approval to establish retail use
- 6/15/93, Approval to install parallel sign
- 3/15/93, Approval to establish retail use
- 7/30/91, Approval to install two parallel signs
- 10/20/88, Approval for parallel sign
- 10/14/88, Approval to replace existing door and stairs
- 10/26/87, Approval to install three parallel signs
- 3/5/85, Approval for parallel signs
- 1/31/85, Approval to install new front door and stairs
- 11/9/84, Approval to establish marine retail store

- 4/7/84, Approval for parallel sign
- 3/23/84, Approval to construct new doorway on King Street facade
- 12/23/83, Approval to convert portion of warehouse to retail use
- 8/14/75, Approval to install 4,000 gal. underground gasoline tank and associated pump

Recommendation: Review and table Major Impact and Certificate of Appropriateness application pending resolution of outstanding items as noted below:

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Sec. 3.5.6, Review Criteria

(a) Conditional Use Review Standards

1. The capacity of existing or planned community facilities;

The proposed building will be served by municipal water and sewer. Sufficient capacity is available and has been confirmed in writing from the Department of Public Works. A state wastewater permit will also be needed prior to construction. As noted in Sec. 5.5.3, a stormwater management system is proposed and will provide attenuation and treatment of stormwater prior to controlled discharge into the city system. (Affirmative finding)

2. The character of the area affected;

The subject property is located within the Battery Street Transition zone and is surrounded by a mix of commercial properties. Some residences are also present in the neighborhood. The scale of buildings in the area varies considerably. The proposed office structure would be one of the larger buildings in the immediate neighborhood; however, it remains within the established scale buildings in the area. (Affirmative finding)

3. Traffic on roads and highways in the vicinity;

A preliminary traffic report has been provided. Anticipated peak hour trip ends (70) are below the threshold (75) requiring a full traffic analysis. Level of service at the King and Battery Street intersection is moderately affected by the proposed development with a decline from LOS B to C southbound on Battery Street. Traffic queues may block access into/out of the site on rare occasion. No transportation improvements are proposed. Public Works has not yet signed off on the traffic report. (No finding possible)

4. Bylaws then in effect;

Several outstanding items remain to be addressed by other City departments. Until these items are addressed, consistency will all applicable bylaws cannot be verified. (**No finding possible**)

5. Utilization of renewable energy resources;

There is no indication that this development will utilize renewable energy resources. Given its ample southern and western exposure, it may be a good candidate for solar energy. In any event, the project will not adversely impact the potential use of alternative energy by neighboring properties. (Affirmative finding)

6. Cumulative impacts of the proposed use;

The proposed development will bring additional office space within close proximity to Burlington's downtown. Little in the way of cumulative impacts are anticipated with the proposed

use. Additional traffic will be generated; however, Public Works approval has not yet been obtained. (No finding possible)

7. Functional family;

Not applicable.

8. Vehicular access points;

The building will be served by two vehicular access points, one on King Street and another on Battery Street. Given the configuration of this corner property and the proposed garage, these two access points are acceptable. (Affirmative finding)

9. Signs;

Outdoor signage is subject to a separate zoning permit.

10. Mitigation measures;

The proposed use is unlikely to generate noise or glare sufficient to warrant mitigation. (Affirmative finding)

11. Time limits for construction;

The application indicates that construction will take 12 months. This duration is within the standard time frame afforded zoning permits. Construction hours will be governed by the city's noise ordinance. (Affirmative finding)

12. Hours of operation and construction;

Office use is permitted in the BST district and does not need to be limited by permit. As noted above, hours of construction need not be specified in this location and will be restricted by the city's noise ordinance. (Affirmative finding)

13. Future enlargement or alterations;

In the event of future enlargement or alteration, permits would be required and reviewed under the regulations then in effect. (Affirmative finding)

14. Performance standards;

Performance standards relating to outdoor lighting and erosion control are addressed under Article 5 of these findings.

15. Conditions and safeguards;

Approval of this project will be conditioned to implement the purposes of the zoning regulations. (Affirmative finding)

(b) Major Impact Review Standards

1. Not result in undue water, air, or noise pollution;

Stormwater management will be substantially improved as part of this application. See Sec. 5.5.3 for details. Air and noise pollution will be as expected for a typical office use. (Affirmative finding)

2. Have sufficient water available for its needs;

See Sec. 3.5.6 (a) 1.

- 3. Not unreasonably burden the city's present or future water supply or distribution system; See Sec. 3.5.6 (a) 1.
- 4. Not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;

A comprehensive erosion prevention and sediment control plan has been submitted along with a stormwater management plan. The plans have been reviewed by the Conservation Board and are now subject to review and approval by the Stormwater Administrator per Chapter 26. (Affirmative finding if conditioned)

- 5. Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed; See Sec. 3.5.6 (a) 3 for traffic impacts. The proposed office use will not cause unreasonable congestion or unsafe conditions on nearby sidewalks or bikeways. (Affirmative finding)
- 6. Not cause an unreasonable burden on the city's ability to provide educational services; The proposed office building will have no adverse impact on the city's ability to provide educational services. (Affirmative finding)
- 7. Not place an unreasonable burden on the city's ability to provide municipal services; The proposed development will generate additional impacts on city services such as water and sewer and possibly emergency services; however, those impacts are expected to be proportionately modest. Payment of impact fees will help offset impacts generated by the development. (Affirmative finding if conditioned)
- 8. Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city; See Sec. 6.2.2 (a) & 6.3.2 (b).
- 9. Not have an undue adverse effect on the city's present or future growth patterns nor on the city's fiscal ability to accommodate such growth, nor on the city's investment in public services and facilities;

The project constitutes redevelopment of an existing commercial site into an office building with associated structured parking. It will have no adverse impact on the city's present or future growth patterns. (Affirmative finding)

10. Be in substantial conformance with the city's municipal development plan; The proposed development can be found to be in substantial conformance with the MDP, as per the following:

The proposed development brings new office space into the city's Downtown Improvement District, which is intended to attract and support a wide range of retail and office uses (pg. I-10, Downtown Improvement District).

The project includes a comprehensive stormwater management plan that collects and attenuates stormwater runoff prior to discharge into the city system. It also includes pervious hard surfaces

that contribute to onsite stormwater management, rather than shedding runoff into the city streets (pg. II-5, Urban Ecosystems).

The building will strengthen the southeast corner of the Battery and King Street intersection and reinforce this gateway into the city (pg. III-5, Gateways).

The proposed development will contribute to the city's network of street trees and will also include the burying of utility lines (pg. III-9, Street Trees and Locating Utilities).

The new office building will contribute to Burlington's status as a regional growth center and will bring additional jobs into Burlington's downtown area (pg. VI-3, Regional Growth Center & pg. VI-5, Creating New Jobs).

The proposed building will comply with the city's current energy efficiency standards (Sec. VIII). (Affirmative finding)

11. Not have an undue adverse impact on the present or projected housing needs of the city in terms of amount, type, affordability and location;

The proposed office building will have no adverse impact on the present or projected housing needs of the city. (Affirmative finding)

12. Not have an undue adverse impact on the present or projected park and recreation needs of the city.

Minimal anticipated impacts on the city's park and recreation needs are anticipated. Payment of impact fees will help offset such impacts. (Affirmative finding if conditioned)

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts:

(a) Purpose

(5) Battery Street Transition District (BST)

The subject property is located in the BST zone, a transition area between the downtown waterfront and nearby residential areas. As noted previously, the proposed building is consistent with the existing scale of buildings in the area and will contain a permitted office use. The zoning map depicts the eastern (King Street) parcel as RH (residential high density zoning); however, a zoning administrative interpretation dated March 19, 2010 states that this boundary is incorrectly drawn, and that, in fact, the parcel is within the BST zone. A correction to the zoning map is pending with the Planning Commission. (Affirmative finding)

(b) Dimensional Standards & Density

A FAR of 3 is allowed in the BST zone. The 0.627 acre property would allow an 81,594 sf building. The proposed development, including the office building and garage, is 78,196 sf and is acceptable.

There is no lot coverage limit in the BST zone. The proposed development will entail 85.1% lot coverage.

The proposed building will be set back more than the minimum required 12' from the curb on both King Street and Battery Street. No side or rear yard setbacks are required in the BST zone, except

along the district boundary with a residential zone. In this case, the eastern property line of the King Street parcel is the boundary between the BST and RH zones. A 15' setback is required along this boundary. Since DAB review, the parking structure has been revised to comply with this required setback. A strip of landscaped green space now runs along the eastern property boundary.

The proposed building will be 44' 6" tall on average. The southern elevation is the tallest at 45'. This height is over the 35' maximum height in the BST zone but may be allowed by way of height bonus in subsection (d) 6 below. Note that the building parapet exceeds the roof height but may be permissible as an architectural feature occupying less than 10% of the roof area. (Affirmative finding)

(c) Permitted & Conditional Uses

Offices are a permitted use in the BST zone; however, as a major impact project, it is subject to conditional use review. Such review is included in this application. (Affirmative finding)

(d) District Specific Regulations

1. Use Restrictions

A. Ground Floor Residential Uses Restricted

No residential use is included in this proposal. (Affirmative finding)

B. Residential/Nonresidential Mix Required (Not applicable)

2. Public Trust Restrictions (Not applicable)

3. Facades and Setbacks on Side and Rear Property Lines

The neighboring building to the south is built to the property line shared with the subject development. It has windows facing the proposed development. As a result, a 10' setback is required for new buildings abutting the existing structure. Surface parking and a driveway into the lower parking deck will run along the southern property line and is acceptable. The garage structure will be placed well behind (east of) the neighboring building and, in turn, does not need to meet a 10' setback. (Affirmative finding)

4. Building Height Setbacks (Not applicable)

5. Lake Champlain Waterfront Setbacks (Not applicable)

6. Development Bonuses/Additional Allowances

The application seeks a height bonus under item D, *Job Attraction and Expansion Bonus*, of this criterion. This bonus is offered at 10' and 20' depending on the amount of commercial space proposed. In this case, the applicants propose 100% commercial office space and are therefore eligible for a 20' height bonus. In actuality, less than 10' of additional height are requested. In order to be approved for the height bonus under item D, the Development Review Board must find that such additional height allowance is necessary to accommodate the creation of additional jobs

in Burlington which will not be created in the City without such allowance. A second criterion refers to job retention which does not apply, as the property is vacant. The applicant has submitted information that asserts the project is financially infeasible without the additional 10,500 sf of rentable space associated with the height bonus. As the proposed office building will bring jobs into the city, and given that it is infeasible without the square footage associated with the increased height, the proposal can be found to warrant the additional height under this criterion. (Affirmative finding)

Article 5: Citywide General Regulations Sec. 5.2.3, Lot Coverage Requirements
See Sec. 4.4.1 (b) above.

Sec. 5.2.4, Buildable Area Calculation (Not applicable)

Sec. 5.2.5, Setbacks
See Sec. 4.4.1 (b) above.

Sec. 5.2.6, Building Height Limits See Sec. 4.4.1 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations See Sec. 4.4.1 (b) above.

Sec. 5.4.8, Historic Buildings and Sites

(d) Demolition of Historic Buildings

1. Application for Demolition

All required materials have been submitted in application for the historic buildings. (Affirmative finding)

2. Standards for Review of Demolition

The historic buildings onsite have experienced significant deterioration; however, their condition is not the primary reason for demolition. The applicant has submitted a comprehensive historic analysis of the property and structures along with an economic feasibility study. In short, the buildings are not particularly significant and cannot be rehabilitated as part of a reasonably beneficial economic use of the property.

Redevelopment of the site is proposed in such a way as to relate well to the existing built environment in the area and minimizes impacts on remaining historic buildings. Redevelopment as proposed brings the property towards the use and intensity of development intended for this mixed use downtown district.

As required, the existing buildings have been properly documented.

The demolition is proposed in conjunction with redevelopment of the property with a new office building and associated site improvements. The property will not be left vacant. (Affirmative finding)

3. Deconstruction: Salvage and Reuse of Historic Building Materials
The applicant is encouraged to make materials from the historic buildings available to others for salvage. (Affirmative finding if conditioned)

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. (Affirmative finding)

Sec. 5.5.2, Outdoor Lighting

Lighting specification sheets and a photometric plan have been submitted; however, the fixtures in the specification sheets submitted in March 2010 do not appear to match those in the photometric plan done in April. This discrepancy needs to be resolved. The fixtures are cutoff and appear to utilize either LED or metal halide bulbs. Both types would be acceptable. The photometric plan depicts illumination levels upwards of 30 footcandles by the main entrance on Battery Street. Building entry illumination levels may not exceed 5.0 footcandles. Walkway illumination levels average 5.4 footcandles; however, the maximum average permissible is 0.5 footcandles with no one point exceeding 2.0 footcandles. The outdoor parking and circulation areas illumination levels exceed the maximum illumination level of 4.0 footcandles at any one point, and the uniformity ratio is beyond the 20:1 maximum variance permissible. Overall, the lighting plan incorporates acceptable lighting fixtures and environments; however, illumination levels need to be revised substantially downward. (Affirmative finding if conditioned)

Sec. 5.5.3, Stormwater and Erosion Control

A stormwater management plan has been provided and has been reviewed and approved by the Conservation Board. Review and approval by the Stormwater Administrator is needed per Ch. 26, Wastewater, Stormwater, & Pollution Control. Essentially, stormwater will be collected and directed into an underground tank. After settling, water will discharge from the tank into the city system at a controlled rate. Pervious pavers will be utilized at the garage entries and in front of the main entrance on Battery Street. Given site conditions, these pavers will drain into underground piping that will direct water into the stormwater collection system.

An erosion prevention and sediment control (EPSC) plan has been provided and forwarded to the Stormwater Administrator, subject to her review and approval. (Affirmative finding if conditioned)

Article 6: Development Review Standards: Part 1, Land Division Design Standards
Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

No trees or other significant vegetation will be removed as part of this proposal. There are no significant natural areas on the property. (Affirmative finding)

(b) Topographical alterations

The site slopes downward from east to west with a grade change of about 10 feet. Significant excavation is proposed for the building and associated parking structure; however, the end result at grade will be little different from existing conditions. (Affirmative finding)

(c) Protection of important public views

No public views of Lake Champlain and the Adirondack Mountains or of the Green Mountains are significantly affected by development. Views from private property are not considered under this criterion. (Affirmative finding)

(d) Protection of important cultural resources

There are no known pre-historic archaeological resources on the property. However, the subject property contains historic structures. A detailed analysis of these structures was prepared by the applicant's consultant. A review and comments on this report regarding these structures are addressed under Sec. 5.4.8. (Affirmative finding)

(e) Supporting the use of alternative energy

It is the intent of the developer to achieve LEED certification from the U.S. Green Building Council. There is no indication that alternative energy will be utilized; however, the building will have ample solar exposure to the south and west. Natural light will reduce the need for artificial lighting inside the building. (Affirmative finding)

(f) Brownfield sites

The subject property is not included on the Vermont DEC's Hazardous Site List; however, given the historic uses of the site and other nearby properties with hazardous waste problems, a Phase I Environmental Site Assessment (ESA) was conducted for the site in 2003. Three underground storage tanks were removed or closed in place in 2002. No evidence of contamination was found in the vicinity of two of the tanks. Limited contamination was found in the vicinity of the third tank. The site was removed from the Hazardous Site List because of the low threat to receptors. The ESA concluded that there is "no evidence of recognized environmental conditions on site that warrant further investigation." Indoor air sampling at the nearby 151 South Champlain Street site indicates the presence of some contaminants exceeding EPA Risk Based Concentrations. The contaminants are related to the past use of the site for dry cleaning. A Corrective Action Plan (CAP) for nearby sites was developed. As recommended by the DAB and the Conservation Board, an updated account of the results of the CAP and a determination regarding the subject site should be provided. (Affirmative finding if conditioned)

(g) Provide for nature's events

See Sec. 5.5.3 for stormwater management. Provision for snow storage has not been indicated; however, there is some room available in the green space to be provided along the eastern boundary. (Affirmative finding)

(h) Building location and orientation

The site is a corner lot fronting on south east corner of Battery and King streets with existing buildings to the east (35 King St.) and south (196 Battery St.). The main entrance appropriately fronts on Battery St. and includes large glass windows that address the frontage. A pedestrian circulation plaza and seating area is located within the front entrance area on Battery Street. The south and east elevations are rear in nature and design. The north elevation runs along the King Street frontage and includes some ground level large windows along half its length with a

stone veneer along the remainder. As recommended by this criterion, the proposed building is placed near the intersection and parallel to the street in order to help anchor the corner and to take advantage of the high visibility location. Sight lines at the intersection appear to remain adequate; however, there is no indication that the City Engineer has reviewed and approved the adequacy of sight distances along the approaches to the intersection as required. (No finding possible)

(i) Vehicular access

The proposed parking areas will be served by two vehicle access points. The lower level of the parking garage will provide for 62 vehicles which will enter/exit from Battery Street and the upper level of parking will provide for 30 vehicles which enter/exit from King Street. The sidewalks will be re-constructed and placed in-line with the existing sidewalk on both Battery and King Streets. (Affirmative finding)

(j) Pedestrian access

A pedestrian circulation plaza and seating area is located at the front entrance area on Battery Street. Pedestrian access into the proposed building will be provided via this main entry. Any portions of the plaza and benches in the public ROW will have to obtain appropriate approvals from Public Works, Parks & Recreation, and/or the City Council as may be required. Sidewalks are depicted crossing the garage entry driveways along both streets. (Affirmative finding)

(k) Accessibility for the handicapped

Several handicap parking spaces are depicted in the proposed garage in close proximity to the elevators. It is the applicant's responsibility to comply with all applicable ADA requirements. A handicap space is shown in the Battery Street ROW, but no accessible curb cut evident. (Affirmative finding if conditioned)

(1) Parking and circulation

As recommended by this criterion, parking will be placed to the side and rear of the structure. Much of it will be placed inside and under the building. Parking at the surface level is set back from the front line of the building as required along Battery and King Streets. Relatively little surface parking (9 compact spaces along Battery Street) is included in this proposal. Given sight constraints and the proximity of the neighboring building to the south, no shade trees are proposed for this surface parking area. Shade trees are recommended but not required. The adjacent building to the south will likely provide the recommended 30% shading for these surface parking spaces. If feasible, shade trees should be planted along the property line east of the adjacent building and west of the parking garage. (Affirmative finding if conditioned)

(m) Landscaping and fences

Given the site's location in a downtown mixed use zone, relatively little green space is proposed. The 15' wide strip of green space along the eastern property line will be planted with new trees and shrubs. Other new landscaping will be concentrated around the building's main entrance. New street trees (red maples) are also proposed along Battery and King Streets. These street trees are subject to review and approval by the City Arborist. No new fencing is proposed. (No finding possible)

(n) Public plazas and open space

As noted a plaza with seating and plantings is proposed in front of the building along Battery Street. This plaza will have ample exposure to the sun. Shadow impacts on the proposed plaza are expected to be limited to the morning hours. (Affirmative finding)

(o) Outdoor lighting

See Sec. 5.5.2.

(p) Integrate infrastructure into the design

Trash and recycling rooms are within the central core service area. Any new utility lines will be buried. A new transformer is proposed at the northeast corner of the proposed building. Screening must be provided and depicted on revised plans. (Affirmative finding if conditioned)

Part 3, Architectural Design Standards Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The massing, height, and scale of the proposed are consistent with the expected development in the BST district. A height bonus of about 10' is sought as noted in Sec. 4.4.1 (d) 6. Although the proposed building will be one of the larger structures in the immediate area, the apparent mass and scale of the proposed building has been successfully broken into smaller parts by varying materials and planes along the façade and by providing distinct building elements such as the entryway plaza and top story setbacks and terraces. (Affirmative finding)

2. Roofs and Rooflines

The proposed building will have a flat roof, which is common in the downtown. The roofline is varied by way of top story setbacks and parapets. (Affirmative finding)

3. Building Openings

The primary building façade is clearly articulated along Battery Street. A plaza provides visual and functional reinforcement to this main entrance. Variation in fenestration contributes to splitting the building into distinct sections – ground level, mid levels, and top level. (Affirmative finding)

(b) Protection of important architectural resources

The subject property contains historic structures. These structures will be demolished and replaced by the new office building. See Sec. 5.4.8 for details.

(c) Protection of important public views See 6.2.2 (c) above.

(d) Provide an active and inviting street edge

The proposed building successfully provides an active and inviting street edge along Battery Street. Per this criterion, it integrates a mix of architectural features and materials with a plaza entry along the ground level. Fairly extensive glass along the ground level provides visual access into the interior of the building. This ground level glass will not be tinted, frosted, or mirrored. The other street elevation, King Street, includes fenestration for approximately half its length along the ground level. Due to topography and structured parking, the eastern half of this street level façade is enclosed but clad in stone veneer. (Affirmative finding)

(e) Quality of materials

The building will be clad in sections of red and off-white brick. Stone veneer will be used on the foundation. Spandrel glass will be installed along the top floor. A precast concrete cornice will be installed along the top of the 1st story. Window materials are not noted and must be. These materials are of high quality and will extend the life expectancy of the proposed building. (Affirmative finding if conditioned)

(f) Reduce energy utilization

Abundant windows will allow ample sunlight into the building interior. As the applicant is seeking LEED certification for the building, various energy reduction methods are expected; however, none have been specified. The building must comply with the city's current energy efficiency requirements. (No finding possible)

(g) Make advertising features complimentary to the site

A sign plan or tenant signs are expected. The western building elevation includes a sign band. While individual signs would require separate zoning permits the ground level concept for signs appears acceptable. (Affirmative finding)

(h) Integrate infrastructure into the building design

Most mechanical equipment will be located inside the building. A rooftop HVAC cooling tower is depicted on the elevation drawings; however, details have not been provided. A roof plan along with HVAC details and screening must be provided. (No finding possible)

(i) Make spaces safe and secure

The building entrance is clearly visible. The building appears readily accessible by emergency vehicles along the both the north (through the parking area) and along Battery Street. Fire Marshall approval of the building's accessibility by emergency service vehicles has been obtained. (Affirmative finding)

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The subject property is located in the Downtown parking district. The 45,000 sf building requires 90 parking spaces (i.e. 2 spaces per 1,000 sf of office space). The proposed parking garage will contain 92 spaces. Of the 92 total parking spaces, 12 (13%) are compact spaces. Compact spaces may account for up to 15% of total parking per Sec. 8.1.12, (h) Compact Car Parking. There has been some public input asserting that some of the parking spaces are dedicated to neighboring properties. If so, a parking waiver for the subject office use may be required. Clarification of parking provision and allocation is needed. (No finding possible)

Sec. 8.1.10, Off-Street Loading Requirements (Not applicable)

Sec. 8.1.11, Parking Dimensional Requirements

All full size parking spaces are 9' X 20' as required, and compact spaces are 8' X 18' (or 20'). Back-up space of 20' length is provided throughout, whereas 24' is the standard distance. The length of back-up space may be reduced by the DRB due to site topography, location of existing or proposed structures, etc. per this criterion. In this case, the constraints of the lot and the required

15' setback along the eastern property boundary necessitate the shorter back up length. The 20' length does allow sufficient room for 2-way circulation. (Affirmative finding)

Sec. 8.1.12, Limitations, Location, Use of Facilities (a) Off-Site Parking Facilities (Not applicable)

(b) Downtown Street Level Setback

As required by this criterion, grade-level parking is setback from the front property lines along both King Street and Battery Street. (Affirmative finding)

- (c) Front Yard Parking Restricted (Not applicable)
- (d) Shared Parking in Neighborhood Parking Districts (Not applicable)
- (e) Single Story Structures in Shared Use Districts (Not applicable)
- (f) Joint Use of Facilities (Not applicable)

(g) Availability of Facilities

The parking to be constructed as part of this development will be for the exclusive use of employees and customers. It will not be used for the storage or display of vehicles or materials. (Affirmative finding)

(h) Compact Car Parking See Sec. 8.1.8.

Sec. 8.1.13, Parking for Disabled Persons

A number of handicap parking spaces are proposed and comply with the minimum dimensional requirements and location next to access isles of 5' width. These spaces shall be marked and signed as required for handicap spaces. (Affirmative finding if conditioned)

Sec. 8.1.14, Stacked and Tandem Parking Restrictions (Not applicable)

Sec. 8.1.15, Waivers from Parking Requirements/Parking Management Plans (Not applicable)

Sec. 8.2.5, Bicycle Parking Requirements

The proposed building requires 11 long term bicycle parking spaces and 5 short term bicycle parking spaces. The garage floor plan depicts a locker room for 10 bicycles for long term bike parking. One additional long term space is needed. The first floor plan depicts a bike rack under cover with room for 10 bikes. (Affirmative finding if conditioned)

II. Conditions of Approval

None offered at this time. The following outstanding items must be addressed before approval may be granted by the Development Review Board:

- 1. Review and approval of anticipated traffic impacts and mitigation measures, if any, by the Department of Public Works.
- 2. Review and approval of traffic sight lines at the King Street and Battery Street intersection by the City Engineer (Department of Public Works)
- 3. Review and approval of the proposed street trees by the City Arborist.
- 4. Articulation of measures proposed to achieve LEED certification.
- 5. Roof plan, including mechanical equipment details, and screening.
- 6. Articulation of parking spaces associated with the onsite office building and with offsite uses.